

MONTANA LEGISLATIVE HISTORY

Chapter 480 19 91

Bill H 182 S _____ Original bill & history ☒ C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) Jan 29 ☒ C

Hearing Date(s) Mar 14 ☒ C

Feb 05 ☒ C

Date Out Mar 26 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 06 ☒ C

Comm. rpt. Apr 02 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

HB 189

HB 187 INTRODUCED BY DRISCOLL, ET AL

REVISE WORKERS' COMPENSATION COMPUTATION FOR
CONSTRUCTION INDUSTRY

1/15	INTRODUCED		
1/15	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/15	FIRST READING		
1/15	FISCAL NOTE REQUESTED		
1/21	FISCAL NOTE RECEIVED		
1/21	FISCAL NOTE PRINTED		
1/29	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	87	7
2/11	3RD READING PASSED	94	6
TRANSMITTED TO SENATE			
2/12	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/12	FIRST READING		
2/13	REVISED FISCAL NOTE REQUESTED		
2/15	REVISED FISCAL NOTE RECEIVED		
2/15	REVISED FISCAL NOTE PRINTED		
3/14	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	49	0
4/05	3RD READING CONCURRED	45	5
RETURNED TO HOUSE WITH AMENDMENTS			
4/09	2ND READING AMENDMENTS CONCURRED	72	23
4/10	3RD READING AMENDMENTS CONCURRED	78	21
4/15	SIGNED BY SPEAKER		
4/16	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 480		

EFFECTIVE DATE: 7/01/92

HB 188 INTRODUCED BY MENAHAN, ET AL.

ESTABLISH VETERANS' NURSING HOME ANNEX AT GALEN

1/15	INTRODUCED		
1/15	REFERRED TO HUMAN SERVICES & AGING		
1/16	FIRST READING		
	DIED IN COMMITTEE		

HB 189 INTRODUCED BY THOFT, ET AL.

WATER MEDIATORS IN DECREED BASINS

1/15	INTRODUCED		
1/15	REFERRED TO NATURAL RESOURCES		
1/16	FIRST READING		
1/23	HEARING		
1/26	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED AS AMENDED	97	1
2/01	3RD READING PASSED	98	1
TRANSMITTED TO SENATE			
2/01	REFERRED TO NATURAL RESOURCES		
2/02	FIRST READING		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	49	0
3/12	3RD READING CONCURRED	49	0
RETURNED TO HOUSE			
3/16	SIGNED BY SPEAKER		
3/16	SIGNED BY PRESIDENT		
3/18	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		

1 *House* BILL NO. *187*
 2 INTRODUCED BY *Oriswell HARP* ~~unintroduced~~
 3 *Richard E. Manning*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT
 5 INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS'
 6 COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM
 7 RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING THAT
 8 PREMIUM RATES TO BE PAID FOR WORKERS' COMPENSATION FOR THE
 9 CONSTRUCTION INDUSTRY BE COMPUTED ON THE NUMBER OF HOURS
 10 WORKED RATHER THAN ON A PERCENTAGE OF PAYROLL; AMENDING
 11 SECTIONS 33-16-1004, 39-71-116, 39-71-721, 39-71-723,
 12 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED
 13 EFFECTIVE DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 33-16-1004, MCA, is amended to read:

17 "33-16-1004. Rates -- considerations -- methods --
 18 standards. All rates shall must be made in accordance with
 19 the following provisions:

20 (1) Due consideration shall must be given to:

21 (a) past and prospective loss experience within and
 22 outside this state; ~~to;~~

23 (b) catastrophe hazards, if any; ~~to;~~

24 (c) a reasonable margin for underwriting profit and
 25 contingencies; ~~to;~~

1 (d) dividends, savings, or unabsorbed premium deposits
 2 allowed or returned by insurers to their policyholders,
 3 members, or subscribers; ~~to;~~

4 (e) past and prospective expenses, both countrywide and
 5 those specially applicable to this state; ~~;~~

6 (f) investment income earned or realized by insurers
 7 from their unearned premium, loss, and loss expense reserve
 8 funds generated from business within this state; and ~~to~~

9 (g) all other relevant factors within and outside this
 10 state.

11 (2) The systems of expense provisions included in the
 12 rates for use by an insurer or group of insurers may differ
 13 from those of other insurers or groups of insurers to
 14 reflect the requirements of the operating methods of any
 15 insurer or group with respect to any kind of insurance or
 16 with respect to any subdivision or combination thereof of
 17 insurance for which subdivision or combination separate
 18 expense provisions are applicable.

19 (3) Risks may be grouped by classifications for the
 20 establishment of rates and minimum premiums. Classification
 21 rates may be modified to produce rates on individual risks
 22 in accordance with rating plans which that establish
 23 standards for measuring variations in hazards or expense
 24 provisions, or both. Such The standards may measure any
 25 difference among risks that can be demonstrated to have a

1 probable effect upon losses or expenses.

2 (4) Rates ~~shall~~ may not be excessive, inadequate, or
3 unfairly discriminatory.

4 (5) Except to the extent necessary to meet the
5 provisions of subsections (1) through (3), uniformity among
6 insurers in any matter within the scope of this section is
7 neither required nor prohibited."

8 **Section 2.** Section 39-71-116, MCA, is amended to read:

9 "39-71-116. Definitions. Unless the context otherwise
10 requires, words and phrases employed in this chapter have
11 the following meanings:

12 (1) "Administer and pay" includes all actions by the
13 state fund under the Workers' Compensation Act and the
14 Occupational Disease Act of Montana necessary to:

15 (a) the investigation, review, and settlement of
16 claims;

17 (b) payment of benefits;

18 (c) setting of reserves;

19 (d) furnishing of services and facilities; and

20 (e) utilization of actuarial, audit, accounting,
21 vocational rehabilitation, and legal services.

22 (2) "Average weekly wage" means the mean weekly
23 earnings of all employees under covered employment, as
24 defined and established annually by the Montana department
25 of labor and industry. It is established at the nearest

1 whole dollar number and must be adopted by the department
2 prior to July 1 of each year.

3 (3) "Beneficiary" means:

4 (a) a surviving spouse living with or legally entitled
5 to be supported by the deceased at the time of injury;

6 (b) an unmarried child under the age of 18 years;

7 (c) an unmarried child under the age of 22 years who is
8 a full-time student in an accredited school or is enrolled
9 in an accredited apprenticeship program;

10 (d) an invalid child over the age of 18 years who is
11 dependent upon the decedent for support at the time of
12 injury;

13 (e) a parent who is dependent upon the decedent for
14 support at the time of the injury ~~{however, such a parent is~~
15 ~~a beneficiary only when if~~ no beneficiary, as defined in
16 subsections (3)(a) through (3)(d) ~~of this section, exists};~~
17 and

18 (f) a brother or sister under the age of 18 years if
19 dependent upon the decedent for support at the time of the
20 injury ~~{however, such a brother or sister is a beneficiary~~
21 ~~but~~ only until the age of 18 years and only when no
22 beneficiary, as defined in subsections (3)(a) through (3)(e)
23 ~~of this section, exists}.~~

24 (4) "Casual employment" means employment not in the
25 usual course of trade, business, profession, or occupation

of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means any activity in connection with the erection, alteration, repair, replacement, renovation, installation, or demolition of a building, highway, bridge, or structure.

(6)(7) "Days" means calendar days, unless otherwise specified.

(7)(8) "Department" means the department of labor and industry.

(8)(9) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9)(10) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10)(11) "Invalid" means one who is physically or mentally incapacitated.

(11)(12) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12)(13) "Order" means any decision, rule, direction, requirement, or standard of the department or any other

determination arrived at or decision made by the department.

(13)(14) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14)(15) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15)(16) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable

1 to return to work in the worker's job pool after exhausting
2 all options set forth in 39-71-1012.

3 {16}(17) The term "physician" includes "surgeon" and in
4 either case means one authorized by law to practice his
5 profession in this state.

6 {17}(18) The "plant of the employer" includes the place
7 of business of a third person while the employer has access
8 to or control over such place of business for the purpose of
9 carrying on his usual trade, business, or occupation.

10 {18}(19) "Public corporation" means the state or any
11 county, municipal corporation, school district, city, city
12 under commission form of government or special charter,
13 town, or village.

14 {19}(20) "Reasonably safe place to work" means that the
15 place of employment has been made as free from danger to the
16 life or safety of the employee as the nature of the
17 employment will reasonably permit.

18 {20}(21) "Reasonably safe tools and appliances" are such
19 tools and appliances as are adapted to and are reasonably
20 safe for use for the particular purpose for which they are
21 furnished.

22 {21}(22) "Temporary total disability" means a condition
23 resulting from an injury as defined in this chapter that
24 results in total loss of wages and exists until the injured
25 worker reaches maximum healing.

1 {22}(23) "Year", unless otherwise specified, means
2 calendar year."

3 NEW SECTION. **Section 3.** Premium rates for construction
4 industry. The premium rates under plan No. 2 to be paid for
5 workers' compensation insurance for the construction
6 industry must be computed on the number of hours worked for
7 each occupation classification rather than on a percentage
8 of payroll.

9 **Section 4.** Section 39-71-721, MCA, is amended to read:
10 "39-71-721. Compensation for injury causing death --
11 limitation. (1) (a) If an injured employee dies and the
12 injury was the proximate cause of such death, then the
13 beneficiary of the deceased is entitled to the same
14 compensation as though the death occurred immediately
15 following the injury. A beneficiary's eligibility for
16 benefits commences after the date of death, and the benefit
17 level is established as set forth in subsection (2).

18 (b) The insurer is entitled to recover any overpayments
19 or compensation paid in a lump sum to a worker prior to
20 death but not yet recouped. The insurer shall recover such
21 payments from the beneficiary's biweekly payments as
22 provided in 39-71-741(5).

23 (2) To beneficiaries as defined in
24 39-71-116{2}(a){3}(a) through {2}{d} {3}(d), weekly
25 compensation benefits for an injury causing death are

66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116~~(2)~~~~(e)~~~~(3)(e)~~ and ~~(2)(f)~~ (3)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(2)~~~~(b)~~(3)(b) through ~~(2)(d)~~ (3)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116~~(2)~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 5. Section 39-71-723, MCA, is amended to read:

"39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections ~~(2)(e)~~ (3)(e) and ~~(2)(f)~~ (3)(f) of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact

for determination by the department."

Section 6. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in

the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116(8)--and 39-71-116(22)."

Section 7. Section 39-73-108, MCA, is amended to read:

"39-73-108. Payment of benefits where person entitled is in institution. If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be

1 paid his beneficiary, if any, as defined in 39-71-116(2)." 1

2 NEW SECTION. **Section 8.** Codification instruction. 2

3 [Section 3] is intended to be codified as an integral part 3
4 of Title 39, chapter 71, part 22, and the provisions of 4
5 Title 39, chapter 71, part 22, apply to [section 3]. 5

6 NEW SECTION. **Section 9.** Effective date. [This act] is 6
7 effective July 1, 1992. 7

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0187, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring that investment income earned or realized by certain workers' compensation insurers be considered when determining premium rates; defining construction industry; requiring that premium rates to be paid for workers' compensation for the construction industry be computed on the number of hours worked rather than on a percentage of payroll; amending sections 33-16-1004, 39-71-116, 39-71-721, 39-71-723, 39-72-102, and 39-73-108, MCA; and providing a delayed effective date.

ASSUMPTIONS:

1. The proposed amendment to include investment income in the calculation of workers compensation insurance premiums is compatible with 39-71-2320 and 39-71-2321, MCA, which require the State Fund to include investment income in the calculation of State Fund premium rates.
2. The proposed amendment to premium rates for the construction industry applies only to Plan Number 2 workers' compensation private insurance companies. The proposed amendment does not affect Plan Number 3, the State Fund or state agencies.

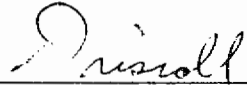
FISCAL IMPACT:

None

TECHNICAL NOTES:

Section 3 would require workers' compensation for the construction industry be computed on the number of hours worked rather than as a percentage of payroll. Construction workers are typically paid only for hours worked. Basing the computation of premium rates on hours would likely have no impact on the cost of insurance.

 1-19-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/21/91
JERRY L. DRISCOLL, PRIMARY SPONSOR DATE
Fiscal Note for HB0187, as introduced. **HB 187**

CHAIRMAN--CAROLYN SQUIRES
NORMAL SCHEDULE==> SITE: ROOM 312-1

DAYS: M,W,F

TIME: 3:00 P.M.

SECRETARY--JENNIFER THOMPSON

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0141	1/10	1/24		PASS AS AMENDED	LABOR & EMPLOYMENT	2/06
HARRINGTON, DAN			PROVIDE UNEMPLOYMENT INSURANCE BENEFITS NONPROFESSIONAL SCHOOL EMPLOYEES			
HB0141	2/08			PASS AS AMENDED		2/18
HARRINGTON, DAN			PROVIDE UNEMPLOYMENT INSURANCE BENEFITS NONPROFESSIONAL SCHOOL EMPLOYEES			
HB0152	1/11	1/17		PASS AS AMENDED		1/30
HARRINGTON, DAN			REVISE STATE MINIMUM WAGE LAW TO CONFORM WITH FEDERAL LAW			
HB0187	1/15	1/29		PASS AS AMENDED		2/06
DRISCOLL, JERRY			REVISE WORKERS' COMPENSATION COMPUTATION FOR CONSTRUCTION INDUSTRY			
HB0204	1/16	1/29		DO PASS		1/30
RICE, SHEILA			REVISE OVERTIME COMPENSATION PERIODS IN CONSTRUCTION INDUSTRY			
HB0232	1/17	1/29		PASS AS AMENDED		2/06
CLARK, ROBERT			HIGHWAY PATROL DISCIPLINARY APPEAL THROUGH COLLECTIVE BARGAINING			
HB0251	1/17	1/31		DO PASS	APPROPRIATIONS	2/01
DRISCOLL, JERRY			EXTENDING LIFE OF WORKERS' COMPENSATION JOINT SELECT COMMITTEE			
HB0256	1/18	1/31		DO PASS		2/01
DRISCOLL, JERRY			REVISE CRITERIA USED TO DETERMINE ELIGIBILITY AND PAYMENT OF UI BENEFITS			
HB0271	1/19	2/14		PASS AS AMENDED		2/15
DRISCOLL, JERRY			ALLOW PSC TO REQUIRE REAR-END TELEMTRY SYSTEM ON CERTAIN RAILROAD TRAINS			
HB0280	1/19	1/31		PASS AS AMENDED		2/01
THOMAS, FRED			DENY TEMPORARY TOTAL DISABILITY BENEFITS UPON RELEASE TO RETURN TO WORK			
HB0305	1/21	2/05		PASS AS AMENDED		2/13
RICE, JIM			ALLOW DEPT OF LABOR TO CONDUCT HEARINGS BY TELEPHONE IN CERTAIN CASES			

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES, on January 29, 1991, at
3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Dave Wanzenried (D)
Tim Whalen (D)

Members Absent: Fred Thomas (R)

Staff Present: Eddy McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB 232

Presentation and Opening Statement by Sponsor:

ROBERT CLARK, House District 31, Ryegate, presented written
testimony for HB 232. EXHIBIT 1

Proponents' Testimony:

Tom Schneider, Montana Public Employees Association, stated his
support for HB 232. EXHIBIT 2

wanted on a given day. This was not in the best interest of the industry or safety.

Michael Mizenko, Vice President, Montana State Association of Plumbers and Pipefitters, stated his support for HB 204.

Lars Ericson, Montana State Council of Carpenters, stated his support of HB 204.

Ron James, Ironworkers Local 841, stated his support of HB 204.

Bob Murphy, Business Manager, International Brotherhood of Electrical Workers Local Union 185, stated his support of HB 204.

Don Judge, Executive Secretary, AFL-CIO, stated his support with written testimony. EXHIBIT 3

John Manzer, Business Representative, Teamsters, stated his support for HB 204.

Johnny Monahan, Ironworkers Training Program, stated his support for HB 204.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. RICE stated that it's not often that contractors and labor on the same side of an issue. She urged support for HB 204.

HEARING ON HB 187

Presentation and Opening Statement by Sponsor:

REP. JERRY DRISCOLL, House District 92, Billings, submitted an amendment to HB 187. EXHIBIT 4 Washington is the only state that pays Workers' Compensation by the hour instead of a percentage of payroll. It works well in Washington, and it will work well in Montana. There are 79 class codes for construction in the State Fund, for example: carpenters in housing are \$10.72 per \$100 of payroll, plumbers are \$6.81 per \$100 of payroll, electricians are \$5.31 per \$100 of payroll, ironworkers three stories and above are \$79.09 per \$100 of payroll. All contractors keep track of hours for numerous reasons, but mainly for bidding on the next job. If it is estimated that a bridge deck can be poured in 100 hours, and it takes 115 hours and that is consistent, then the contractor better raise his bid or he will lose money. All contractors keep very close track of hours whether they are union or not. In bidding a job, most contractors figure a price per man-hour, which includes wages, fringe benefits, unemployment insurance, workers compensation, FUTA, and FICA. They have to convert this percentage into an hourly rate now. The calculation is eight hours times the rate,

divide it by the percentage that is presently in the class code, and that equals the hourly rate.

Proponents' Testimony:

Gene Fenderson, Montana Building and Construction Trades Unions, stated the current law penalizes employers who are willing to pay a decent wage. He referred to a Heavy & Highway News handout. EXHIBIT 5. Oregon did a study of the average weekly wage and the loss ratio for employers. He read from the handout that the employers in the lower paying categories actually paid 25 percent less in premiums (\$1.5 million) than the higher paying category (\$2 million) while they recorded 54 percent in losses (\$450,136 versus \$291,610). Highly paid construction workers, mostly union are safest in the industry and productivity is higher. Contractors pay more for coverage per hour for those workers than the employer that is paying a low wage.

Don Judge, Executive Secretary, AFL-CIO, presented written testimony. EXHIBIT 6

Ron James, Business Manager, Ironworkers Local 841, stated that contractors do cheat when they turn in compensation rates. They may classify an ironworker as a laborer. The ironworkers have a four-year apprenticeship and training program. They are taught how to work safely in the air. When out-of-state contractors bid jobs in Montana and bring in their people, they don't pay the Montana Workers' Compensation rate but their state's rates. In most cases their rates are lower than in Montana, and it puts the fair Montana contractors at a disadvantage.

Don Chance, Montana Building Industry Association (non-union), stated he had worked under the proposed legislation that is similar in Washington. It is a system that is preferable to the industry. The association members who pay a higher wage to more experienced workers feel discriminated against, and they are hiring more experienced, less accident-prone workers.

Ralph Beltrone, All Steel Building Company, stated that his company isn't as competitive because of the unfairness in the rates. His company did work at the Malmstrom Airforce Base, which required weekly payroll reports with hours worked and the scale. It wasn't hard to compute.

Randy Williams, President, Williams Construction, stated his company is union and average wages are \$18 per hour. The Workers' Compensation rate is 15.85 percent, which is \$2.85 per hour. Therefore, on a 15,000 man-hour job, the Workers' Compensation is about \$42,795. Competitors pay around \$10 per hour and their rate would be \$1.59 per hour. On the same 15,000 man-hour job they would pay \$23,775. There is about a \$19,000 difference. If contractors are paying higher wages, they shouldn't have to pay the higher premiums when exposure on the job is the same for both sets of employees.

Mike Mizenko, Vice President, Montana Plumbers and Pipefitters Association, stated his support for the employers throughout the state.

John Allen, National Electrical Contractors Association and owner of Allen Electric, stated that all contractors paying the same classification should be paying the same for medical services. Hospitals or doctors do not discount bills for lower paid employers. Health care is the same; contractors should be paying the same amount of the costs.

Bob Sletton, Sletton Construction Company, stated that safety is first throughout a project. Higher wages are paid to more qualified workers. Having safer ironworkers and paying higher Workers' Compensation rates puts his company at a disadvantage compared to the lower paying contractor.

Dan Hustas, President, Falls Construction, stated workers that have higher skills are safer workers. Employers who employ the highest skilled workers and pay the top wage are penalized by having to pay higher Workers' Compensation rates. He also stated a concern that there has to be integrity within records of the hours kept or there will be worse cheating.

Johnny Monahan, Director, Montana Ironworkers Training Program, stated his support of HB 187.

Lars Ericson, Montana State Council of Carpenters, stated that Workers' Compensation rules are inequities in the law.

Opponents' Testimony:

John Lacy, National Council on Compensation Insurance (NCCI), presented a pamphlet on Workers' Compensation and explained the background. EXHIBIT 7A. Workers' Compensation bases a premium as a unit payroll rate per \$100 payroll. The premium base in insurance should be able to reflect the exposure of the hazard. Employee's pay is the basis of Workers' Compensation up to the state maximum. Injured workers are compensated on the basis of their pay prior to the accident. Higher paid workers generally would receive higher benefits. Under the classification system, there is a grouping of insureds with similar job categories. The employers are not 100 percent average, so there is a variation. The mandatory experience rating plan tailors the price for the individual employer on the basis on his own loss experience. Insureds who are better than average and have more safety get a reduction in a premium. There is also the mandatory premium discount plan. Switching to a work hour basis for contractors would not be an improvement. Four to five years additional reporting of data would be required if this bill passes. A premium base is the means where the amount of money is collected from the insureds and any change is not going to produce a change in the overall premium. The Washington State Board of Industrial Appeals heard 103 cases in the present fiscal half year where the

majority of concerned disputes were over the intricate workings of the man-hour system. There is a significant dispute over the man-hour assumptions. The vast numbers of employers appear to be satisfied. Total Payroll is not a perfect system. The National Council on Compensation Insurance feels that it is the best system. He presented a handout where the New York Compensation Insurance Rating Board did a study. **EXHIBIT 7B**

Gene Phillips, Alliance of American Insurance, stated that shifting of the premium computation from a payroll base to a man-hour base may decrease premiums for large employers but increase premiums for smaller employers. It would probably be higher for both employers at existing levels. A measurement of exposure to loss is essential to the proper functioning of the insurance process. Work-hour data does not meet the test for availability and verifiability. Employers are not generally required to report detailed information such as work hours. Work hour records may be haphazard or nonexistent. In some cases where employers keep such records, there is no reporting of the record for independent verification. If there was a change, there would be costly efforts by the insurers in order to obtain the necessary verification data.

Jacqueline Terrell, American Insurance Association, stated three reasons of opposition: 1. Man hours worked is not an easily verifiable base for calculating premium. 2. This particular basis for calculating does not keep pace with the increased benefit costs or the benefit levels of the employers that are covered, such as increasing medical costs. 3. The cost of administration, which will be costly to the insurers and the employers. As the economy of a state grows and the cost of living and doing business rises, increased payrolls induce and increase in premium dollars. This happens automatically without an adjustment to rates. Therefore, there is a less dramatic rate adjustment and more predictable rate levels. It will take about five years to make the conversion. There won't be an available data base instantly to start working on premiums on man-hours worked. In Washington, Workers' Compensation premiums are not paid solely by the employer; employees also contribute a portion of those costs. They use a different classification structure, experience rating, premium discounts are not mandatory.

Jim Murphy, Executive Vice President, State Fund, stated that the bill didn't include the State Fund but assumed that it would have to. **EXHIBIT 8**

Questions From Committee Members:

REP. DRISCOLL asked Mr. Lacy what the suggested rate was for an ironworker by NCCI for Montana, not the state rate. Mr. Lacy stated he didn't know without looking it up in the Workers' Compensation Manual. **REP. DRISCOLL** stated that in a contractors' magazine, the suggested rate for Montana ironworkers above three stories was \$152 per \$100 of payroll. Is that close to what your

rate is? Mr. Lacy said that it might be about \$100 per \$100 of payroll. He wasn't familiar with the rate.

REP. DRISCOLL said to Mr. Murphy the NCCI representative suggested rate is probably about \$100, yet the State Fund charges \$75. Why doesn't the State Fund use those rates? Mr. Murphy said that the rates, as required by the statute, are based and set by the State Fund. It is done with an independent actuary. The rates are set by our experience within Montana.

REP. TIM WHALEN asked Mr. Murphy if he said that four years of loss experience would be needed to know how to set rates based on a number of hours worked as opposed to hourly payroll. Mr. Murphy said yes. Currently, three years of payroll and accident experience data is used to determine rates. If hours are substituted for payroll, the actuary will want three years of data to set the rate. REP. WHALEN said that the actuary knows on a year by year basis what is paid out. Why can't the actuary take what is being paid out in claims and divide it by the number of hours worked instead of the number of dollars of payroll and figure the rate that way. Mr. Murphy stated he didn't have the information. REP. WHALEN asked if the Department of Labor and Industry kept records on what the average hourly wage rate is in a particular construction industry. Mr. Murphy said he didn't know.

REP. ROYAL JOHNSON asked Mrs. Terrell to comment on Section 1, Item F. Mrs. Terrell said that the American Insurance Association does not object to that amendment because their income is already reported in that manner.

REP. STEVE BENEDICT stated to REP. DRISCOLL that the State Fund wasn't in the bill. REP. DRISCOLL said there is an amendment to include the State Fund.

REP. RUSSELL FAGG asked Mr. Murphy if he was concerned about the solvency of the State Fund if this bill passes. Mr. Murphy said yes; if a new system is developed based on hours and those hours accurately reflect, then the bottom line revenue needs are going to be the same. It will possibly be redistributed. The concern is whether the hours can be verified and accurate. The State Fund is going to make sure that the bottom line revenue need is satisfied.

REP. BENEDICT asked Mr. Murphy to clarify that employers voluntarily submit the information on per \$100 of payroll now. They are trusted now to give the information, so wouldn't it be the same circumstance with the hour basis. Mr. Murphy said not necessarily; payroll figures are used for numerous other purposes. Payroll records reported may not show one hour of time spent.

REP. DRISCOLL asked Mr. Murphy on reported payroll, "how is the overtime half-time taken off without paying a premium." Mr.

Murphy said the premium is paid on a straight time rate. REP. DRISCOLL said since the payroll records don't show how many hours worked, how can you tell when it's over 40 hours. Mr. Murphy said he didn't know.

Closing by Sponsor:

REP. DRISCOLL stated that the insurance industry said they have been using payroll since the early part of this century. They won't change. The prevailing rate for a laborer is \$12.60 per hour, the rate is \$11.75, and that equals \$1.48 per hour. \$240,000 worth of computer time wasn't needed to compute that. Payrolls can be verified now. You do not pay your premium on overtime. For example, if a person makes \$12 per hour and works 50 hours the computation is 50 times \$12 times the rate, even though the minimum wage and overtime law says time and a half is to be paid after 40 hours. If employers don't know how many hours are worked, how do they know when to take off the half time. The rates of NCCI are highly exaggerated in almost every class code. There are 79 class codes for construction only. The State Fund said that it needs \$200,000 to administer the change; the unions have an auditor that audited over 5 million hours last year for seven construction unions with about 100 contractors. He has a computer and office staff and his total bill was less than \$60,000. Maybe the State Fund should hire him.

EXECUTIVE ACTION ON HB 204

Motion/Vote: REP. PAVLOVICH MOVED HB 204 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 21

Motion/Vote: REP. O'KEEFE MOVED HB 21 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 152

Motion: REP. O'KEEFE MOVED HB 152 DO PASS.

Discussion: REP. O'KEEFE stated that the subcommittee proposed an amendment to change the cap for businesses with an annual gross income of \$250,000 to \$110,000. Rep. Dolezal got statistics from Dunn's Marketing Data which identified gross sales for all the retailers in the state. The subcommittee looked at the percentages of businesses that would be fair to exempt from minimum wage. About 1/3 of the businesses would be exempt from the minimum wage requirement. That would cover 3,013 retailers who have annual sales of less than \$110,000.

Motion: REP. O'KEEFE moved to amend HB 152.

REP. HANSON asked if an organization normally runs about \$100,000 per year and has a good year with annual sales of \$120,000, would

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE

1/29/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS		✓	
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

Amendments to House Bill No. 187
First Reading Copy

Requested by Representative Driscoll
For the House Committee on Employee and Labor Relations

Prepared by Eddy McClure
January 29, 1991

1. Title, line 11.
Following: "39-71-116,"
Insert: "39-71-402, 39-71-426,"

2. Page 8, line 4.
Following: "2"
Insert: "and plan No. 3"

3. Page 8, line 9.
Following: line 8
Insert: "Section 4. Section 39-71-402, MCA, is amended to read:
"39-71-402. Extraterritorial application and reciprocity --
exception. (1) If a worker employed in this state who is subject
to the provisions of this chapter temporarily leaves the state
incidental to that employment and receives an injury arising out
of and in the course of such employment, the provisions of this
chapter shall apply to such worker as though he were injured
within this state.

(2) If a worker from another state and his employer from
another state are temporarily engaged in work within this state,
this chapter shall not apply to them:

(a) if the employer and employee are bound by the
provisions of the workers' compensation law or similar law of
such other state which applies to them while they are in the
state of Montana; and

(b) if the Workers' Compensation Act of this state is
recognized and given effect as the exclusive remedy for workers
employed in this state who are injured while temporarily employed
in such other state.

(3) A certificate from an authorized officer of the
workers' compensation department or similar agency of another
state certifying that an employer of such other state is bound by
the Workers' Compensation Act of the state and that its act will
be applied to employees of the employer while in the state of
Montana shall be prima facie evidence of the application of the
workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor,
enter into agreements with workers' compensation agencies of
other states for the purpose of promulgating regulations not
inconsistent with the provisions of this chapter to carry out the
extraterritorial application of the workers' compensation laws of
the agreeing states.

(5) The provisions of this section do not apply to the
construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."

Renumber: subsequent sections



Heavy & Highway NEWS

EXHIBIT 5
DATE 1/29/91
HB 187

NATIONAL JOINT HEAVY AND HIGHWAY CONSTRUCTION COMMITTEE

111 MASSACHUSETTS AVENUE, N. W.

• WASHINGTON, D. C. 20001 • (202) 842-2713

Vol. 5, No. 4 December, 1989

Workers' Compensation

THE HIDDEN NON-UNION ADVANTAGE

We've been asleep at the switch! There is a major cost factor in construction that prohibits union contractors from being competitive, yet most of us know little about it. More surprising, the labor movement has done practically nothing to change this problem even though it constitutes a greater competitive disadvantage to union contractors than wages, fringes and working conditions combined. It directly affects every construction worker in the United States, and quite possibly, is the single most important issue union contractors and unions face today. For this reason we are presenting this article on Workers' Compensation insurance in hopes that by making you aware of the problem, you can join with us in making changes to the current laws.

History

In the early 1900's, prior to any Workers' Compensation laws, personal injury suits were filed in the courts and employees had to prove employer negligence in order to collect damages. As the United States grew from an agricultural economy to an industrial economy the number of personal injury suits increased and, as you might imagine, was a slow and uncertain legal process for the employer and the injured employee.

In 1911, the first Workers' Compensation laws were enacted in the United States. Today, all 50 states have Workers' Compensation laws which serve to relieve employers of liability from common-law suits involving negligence. While these laws do provide workers with "reasonable income" and medical benefits for job-related injuries, let there be no mistake that Workers' Compensation laws have provided a greater benefit to employers.

In 1976, a government task force studying Workers' Compensation laws found that unless changes were made, Workers' Compensation would become more expensive, less equitable, and less effective. Guess what? No changes have been made and, as you will see, the system is now bordering on a total collapse in many states. The U.S. Department of Health and Human Services estimated that employers spent over \$34.1 billion on Workers' Compensation insurance in 1986. This was \$4.8 billion or 16% higher than 1985, and another 16% higher than 1984.

The Problem

Rates for private Workers' Compensation insurance are universally based on a certain cost per each \$100 of payroll depending on the classification of work. This means that a union employer paying a higher wage rate has a higher Workers' Compensation insurance cost even though studies show that higher paid union workers work safer than their non-union counterparts. This is true even though each contractor has a "modifier" which is supposed to adjust costs according to accident rates. It is true that certain classifications of work are more dangerous than others, but left unchecked, the non-union contractor will cheat by reporting workers in lower cost classifications. As you will see, the higher cost of the insurance because it is based on payroll costs, coupled with the non-union contractor's ability to cheat, can and does give unions a disadvantage that is impossible to make up through wages, fringes, and working conditions. If you think Davis-Bacon cheaters have an unfair cost advantage, get a load of this.

Premium rates vary from state-to-state as well as classifications. Costs can range from 7% to more than 100% of payroll costs, and average an estimated 30%. For example, rates per \$100 of payroll can be as low as \$2.27 for interior electrical wiring in New Jersey to an unbelievable \$162.26 for structural steel erection in Montana. Moreover, in Montana the spread based on classification ranges from \$8.30 to \$162.26 per \$100 of payroll. You'd be pretty naive to believe that Montana contractors are properly classifying their employees.

If it's not bad enough that they cheat, non-union contractors have found myriads of ways to beat the system entirely. One of the easiest ways with little likelihood of getting caught is known as "employee leasing." This system, which is heavily practiced in Florida, works like this: A developer carries the Workers' Compensation insurance on a project, but has no employees. If a contractor's employee gets injured, he/she is placed on the developer's payroll, a minimum premium is paid and presto, the employee is qualified for benefits. With all the money going out and little coming in, it is easy to understand why Florida insurers were asking for a 47.7% increase in rates.

(continued on back page)

(Workers' Compensation continued)

Another scam to eliminate paying Workers' Compensation is so-called independent contractors such as dump truck drivers. With virtually no enforcement, contractors are paying dump truck drivers a fixed fee for their truck which is supposed to cover the driver's wage plus an amount for the truck leasing. In this way, the contractor most likely is paying below Davis-Bacon wages, withholding no income taxes, paying no payroll taxes, and paying no Workers' Compensation insurance. We're surprised that anyone has a legitimate trucking business anymore.

The bottom line is that legitimate contractors who properly classify workers are being forced out of business or forced to cheat. The result is that 21 states have approved rate increases during a six-month period. Florida and Texas, states with a high concentration of non-union employers, have asked for rate increases of 47% and 35%, respectively. Unless changes are made, rate increases will continue which will further reduce the number of legitimate paying contractors and exacerbate the problem. Workers' Compensation is on a collision course!!!

Oregon Study

To prove that the system is "bass backwards" in that higher paid workers are safer and yet must pay a higher premium, a study was done in Oregon that graphically demonstrates this fact. Mandated by the Oregon legislature, the study involved a year-long survey of the state's rating system conducted by the National Council of Compensation Insurance (NCCI) and an independent market research firm. "The data indicates that the system at the front end does have inequities with regards to the high wage union employers," said the NCCI's Director of National Affairs. This can be seen by looking at the premium and loss data shown below:

Average Weekly Wage	Number of Employers	Premium	Total Losses
Less than \$101	59	\$ 184,976	\$ 89,325
\$101-200	151	\$ 419,834	\$ 287,496
\$201-300	381	\$ 1,545,600	\$ 450,136
\$301-400	505	\$ 3,198,836	\$ 1,027,442
\$401-500	409	\$ 5,352,771	\$ 2,013,625
\$501-600	221	\$ 4,008,245	\$ 860,254

Average Weekly Wage	Number of Employers	Premium	Total Losses
\$601-700	151	\$ 2,349,297	\$ 595,415
\$701-800	55	\$ 1,973,052	\$ 291,610
Over \$801	51	\$ 678,731	\$ 111,692

For example, compare the data from employers that pay average weekly wages of \$201 to \$300 with those paying \$701 to \$800. The employers in the lower paying category actually paid 25% less in premiums (\$1.5 million) than the higher paying category (\$2 million) while they recorded 54% more in losses (\$450,136 versus \$291,610).

The study also looked at the modifier to see if it adjusted the premiums based on the loss experience of contractors and found "the modified loss ratio leads to the same conclusions . . ."

Possible Solutions

The most logical solution to the problem of unfairly penalizing higher paying employers is to change the premium computation method from \$100 of payroll to hours worked. After all, an employee's exposure to having a work-related accident is just as great no matter how much he/she is paid. Another solution would be to change the premium based on type of work being performed instead of classifications. In other words, why is a bridge iron worker charged a higher premium than the carpenter working alongside him? These are simple solutions to a complex problem which may prove very difficult to change.

We believe the most logical and equitable way to solve the problem is to pass federal legislation that sets forth minimum guidelines. Certainly, given the disparity of premium costs and benefits between the various states, we wouldn't have to look very far to find justification for a federal Workers' Compensation program. Tackling the problem on a state-by-state basis may be the least effective route to take, but it would certainly be worth the effort.

Finally, in case our readers are not convinced that the current Workers' Compensation system is biased toward non-union contractors, the Maryland Chamber of Commerce had this to say: "Calculating Workers' Compensation rates on hours worked rather than current practice of basing them on payroll removes the cost advantage that non-unionized labor firms have on the Workers' Compensation rates."

That's the final word to prove our point.

National Joint Heavy and
Highway Construction Committee
111 Massachusetts Ave., N.W.
Washington, D.C. 20001

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EXHIBIT 6
DATE 1/29/91
HB 187

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 187 BEFORE THE HOUSE LABOR AND EMPLOYMENT
RELATIONS COMMITTEE, JANUARY 29, 1991

Madam Chair, members of the committee, for the record my name is Don Judge and I'm here today representing the Montana State AFL-CIO in support of House Bill 187.

In 1987, the Montana State AFL-CIO supported a similar measure introduced by Representative Driscoll. Unfortunately, for workers and construction contractors, the measure failed. That has meant four more years of unnecessary, inequitable and unfair competition in the construction bidding process in Montana.

Employers who pay higher wages to their workers have, as result of the failure of this legislation in 1987, been forced to pay higher workers' compensation premiums and to compete against employers who pay substandard wages. Under current law, employers who pay lower wages also pay lower workers' compensation premiums -- even though work place accidents and injuries on their jobs exceed those of the higher paid union workers.

That's right -- union workers are safer workers, and because they generally pay higher wages, union contractors are forced to subsidize the less safe non-union contractors workers' compensation coverage!

The November, 1990, Journal of Occupational Medicine published a study entitled, "Safety Performance among Union and Nonunion Workers in the Construction Industry" by Dr. Dedobbeleer, et al. The study bluntly states: "... that by far the best variable for classifying workers as union or nonunion construction workers was the exposure to safety training." The study further shows that construction workers' safety performance is significantly related to union membership.

According to the January 1991 issue of Safety Spotlight, published by the National Erectors Association, the New Mexico State Legislature recently enacted a law reforming the state's workers compensation reporting requirements. As of January 1, 1991, workers' compensation rates will still be determined by payroll figures, but hours worked must also be reported. According to their Senate Bill 1, the legislature found that "... calculating workers' compensation premium rates strictly on the basis of an employer's wages paid discriminates against and penalizes higher-paying employers."

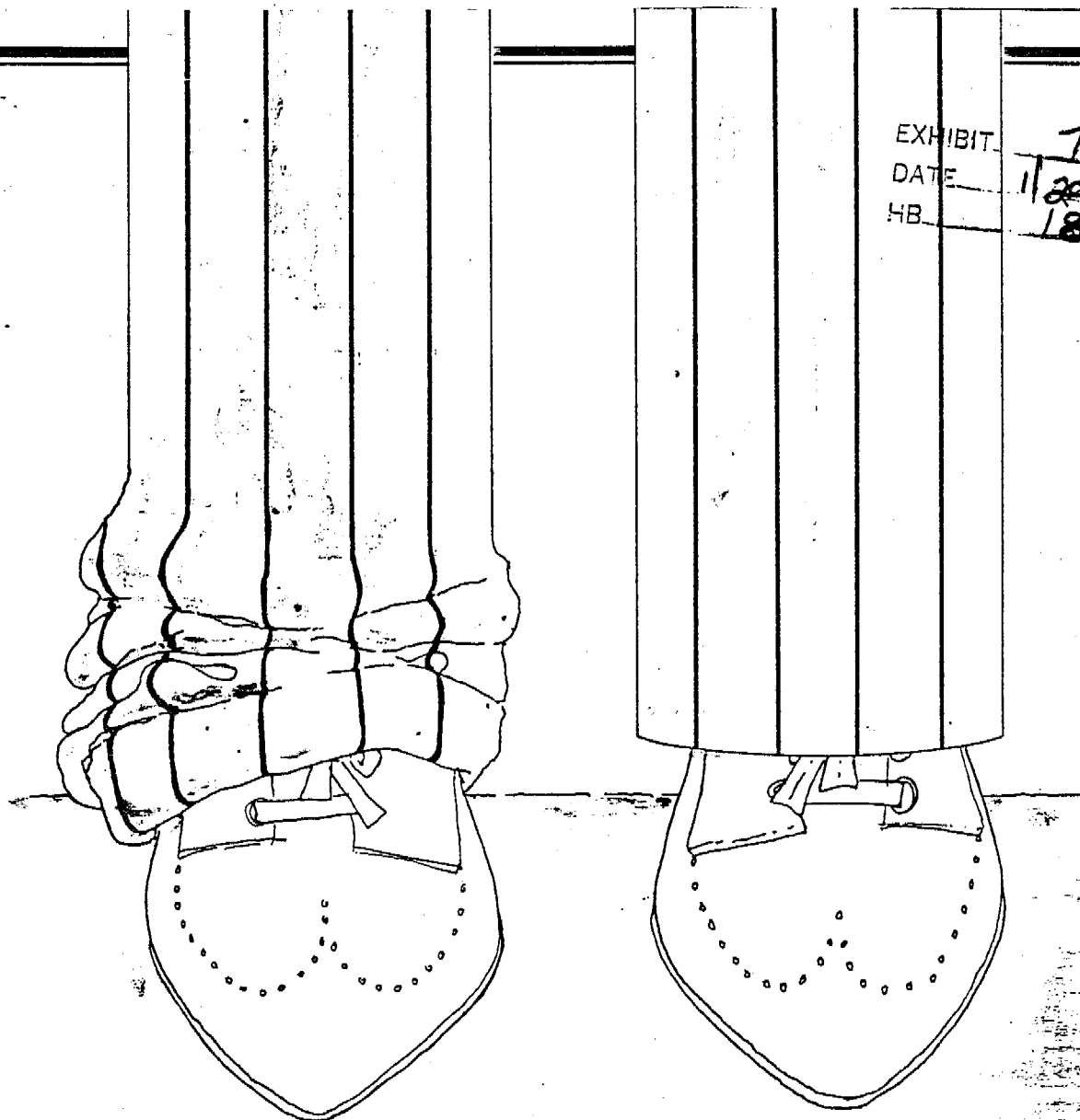


EXHIBIT
DATE
HB

7A
11/29/91
187

**Workers
Compensation Premium**
Finding The Perfect Fit

NEW YORK COMPENSATION INSURANCE RATING BOARD

200 East Forty-Second Street, New York, New York 10017

Telephone (212) 697-3535 Fax (212) 972-1393

EXHIBIT 7B
DATE 1/29/91
HB 187

Expressly Prepared For:
General Building Contractors
of New York State, Inc

Subject: Basis of Premium

At the request of the General Building Contractors of New York State, Incorporated, a study was undertaken by the Rating Board to review the proposal for introduction of a premium determination method which would exclusively use hours to measure exposure to hazards.

General

In connection with this review, several hundred employers were subjected to physical audits whereby their accounting records were examined to establish whether complete and verifiable records of "hours worked" were available. Our study showed that 53% of the employers did have some form of hourly records. However, it is of significance that the balance did not keep any hourly records at all. And it is also important to mention that none of the employers that maintained hours worked records had their hours summarized or broken down by categories of work, e.g., concrete construction, factory, clerical, outside sales, etc.

It is of note that the availability of "hours worked" records changed rather dramatically when certain categories in the construction industry only were reviewed. This part of the study disclosed that over 90% of the higher paying employers did have hours worked records available, and about 60% of the lower wage paying employers in that industry had hours worked records available.

Background of Current System

The present system involves premium charges based on a uniform rate per hundred dollars of payroll for each employee, subject to the type of work involved. If the payroll method was replaced with the number- of- hours worked per employee, we must all ask ourselves how would this affect the current pricing system as it relates to an employers premium?

The current rate per each \$100 of payroll for workers compensation premium is predicated on the anticipated *total payrolls* for each industry and the expected losses for that industry. This system must produce a sufficient amount of premium to cover the *actual* losses for each industry. *It is important to note that this premium "need" to pay actual losses and expenses does not change regardless of the basis of premium; e.g., payrolls, hours, etc.* If the Basis of Premium was changed to other than payroll, then it is expected that there would be a redistribution of the needed premium among the employers in each classification.

Hours Worked V. Use of Payrolls

How would that redistribution be made? Well it would come about naturally, based upon the reported exposure to operations (hours.) However, this system would be affected considerably by the fact of whether an employer did or did not keep records. And of course, whether the records were maintained accurately, and whether the "hours" could be verified somehow.

In theory, the hours-worked method would appear to be the most reasonable way of developing workers compensation premiums. But there is a most serious negative downside in relying solely on hours-worked that must be considered. And the risk is that hours-worked will indeed be subject to inaccuracies, discrepancies, and abuses.

What would be the difference between an hours-worked system and the use of payrolls? The difference involves verification, because payrolls are physically paid to employees, checks are drawn on banks, and multiple tax reports must be completed by employers and filed with governmental agencies who periodically audit these filings. These verification capabilities generally assure that the payrolls used are the payrolls expended, and therefore, are the proper payrolls to be taken by insurance company auditors. This is not the same scenario with the use of hours-worked because as already stated, in too many cases the hours are not available and are not verifiable. Yet, the loss *need* remains the same. Consequently we believe that those employers who maintain good records will pay a greater portion of the premium need than those who do not keep accurate and verifiable records.

As an incidental concern, the auditing of hours by insurance carriers will become more expensive and necessarily generate higher expenses to be added to the "rate". For example: if an employee earned \$24,000 per year, this would currently involve (240) \$100 units of payroll. Translating this into units of hours-worked would mean that, without overtime, we might be dealing with about 2000 hours of actual working time per employee, to "verify" per year. Our study revealed a 26% increase in auditing expense to "audit" hours-worked records..

How would an employer check the accuracy of the insurance carrier's billing of hours? With substantial difficulty, we believe. In a 200 employee firm, for example, this could represent 400,000 hours which have to be extracted from unsummarized records provided the hours are available. And what about the problem of trying to separate this by the type of work done; e. g., clerical, outside sales, inside sales, and the whole gamut of contracting classifications? What checks and balances are there for both the insurance company auditor in developing a billing, or the policyholder who wishes to check the charges? This will likely generate more questions and controversies concerning the accuracy of billings. And there would be difficulties when charges for uninsured subcontractors were required where no hours whatsoever are recorded. Inaccurate estimating of non-recorded hours worked would become prevalent, and seriously affect the accuracy of billings as well as the data base used by a rate service organization and the rates it produces. Think about this; will both carriers and policyholders physically go through a set of records independently to add hours, employee by employee, and classification by classification, if the hours are recorded? Would an insurance auditor be able to accept a computer print-out prepared by the insured? No, because the carrier "audit" would then be a meaningless process. And unlike payrolls, when an "hours" audit is completed, there is no way to reconcile this mass of hourly figures with any summary records, such as the employer's disbursements book, general ledger and quarterly and annual payroll tax returns. With

such a system it would not take long before some very creative and imaginative hours-worked records, or reportings, would be made available "For the insurance company's use only".

While no system, or method, is perfect, on balance, the use of payrolls for premium determination purposes is far superior, and more reliable as a measuring tool for developing equitable premium charges from employer to employer. Additionally, it is far less vulnerable; initially to serious auditing difficulties, and subsequently, to improper ratemaking, than an hours-worked method would be.

Review of Ironworkers' Experience

As part of our review, the G.B.C. was requested to provide the Rating Board with a comprehensive listing of their members who are the "higher paying" employers in the State. Ultimately, we were furnished through various sources, including the G.B.C., names of employers engaged in several contracting activities. This list was culled to extract those employers involved with iron & steel erection, because this subject was originally raised with concern for the iron and steel erection employers. The Board then conducted a review of the available experience collected for the three classification codes which comprise the iron and steel erection industry. This experience revealed the following:

1. The high paying employers' payroll and losses for each of the classification codes accounts for a sizable portion of the total experience available for both categories of employers. The actual percentages for each class are shown below:

<u>High Paving Employers</u>		
<u>Class</u>	<u>% of Payroll</u>	<u>% of Losses</u>
5040 Iron or Steel Erection-Frame Structure	95.0	87.0
5057 Iron or Steel Erection-Frame Structure N.O.C.	95.2	99.4
5059 Iron or Steel Erection-Frame Structure Up to 2 Stories	77.1	88.5

1. The above statistics were based on the data provided to us. There was an "unknown" portion of total experience for these codes, but we believe the unknown experience would likely project to develop similar proportions. Based upon this assumption, it is clear that the experience of the high paving employers is basically responsible for the rate of each classification shown above.

2. In two of the three categories shown (codes 5057 and 5059), the loss experience of the high paying shops is somewhat worse than that of the open shops. If, in fact, a disproportionately higher amount of payroll is presently collected from the high paying employers, then it is reasonable to expect that the ratio of losses to payroll should be lower for the high

paying segment. However, based on the above loss ratios, the higher paying employers incur a disproportionately higher percent of the total losses.

3. Since most of the classification payroll belongs to the higher paying employers, a change to hours worked as a basis of premium will have little or no significance on the total premium paid. Regardless of the premium basis, a specific amount of premium is needed to cover losses and expenses for each industry. Because the experience composition of these classes is largely derived from higher wage paying employers, the bulk of the premium would still come from the higher paying employers, and any new rate structure would self-correct for this regardless of the basis of premium.

Conclusion

We are emphatically opposed to the substitution of "hours worked" as the basis of premium, because it would completely destroy the establishment of equitable premium charges from employer to employer.

It is understandable that the G.B.C. may view the "hours worked" theory as a simplified approach to handling the perceived problem, but we submit that their posture does not recognize the serious pitfalls that are masked within an hours worked system. As already stated, we believe that higher paying members of the G.B.C., under an hours worked basis of premium, would be subjected to paying a substantially higher percentage of the premium needed to cover the losses and expenses for the iron and steel erection classifications than at present.

Members of the G.B.C. may believe that they are presently paying a higher percentage of the needed premium per classification, and support that view with their estimates of a 1/3 disparity in hourly wages. Actually, after application of an improved experience rating and premium discount which high paying employers enjoy, the difference is narrowed considerably.

Testimony HB 187
By James J. Murphy
Executive Vice President, State Fund

First I would like to provide you with some statistical data to demonstrate the impact of HB 187 on the State Fund. The class codes under which we would consider part of the construction industry using NCCI designations generated about \$19,600,000 in premium during fiscal year 1990. This represents about 79 class codes which could effect an estimated 3000 employers.

One technical matter, is the definition of "construction industry" in HB 187. The definition does not agree with the designation used by NCCI to classify codes. We would be in a never ending battle with employers as to whether they should or shouldn't be within the definition. If the bill passes, we suggest the definition merely refer to the definition or designation as used by NCCI.

A second technical matter concerns the premium basis for sole proprietors, partners or corporate officers. Presently these individuals are covered based on a set dollar amount for both premium and benefit purposes. HB 187 is silent on this matter. The bill may need to be amended to require an hourly basis for these coverages and section 39-71-118 may need to be amended for sole proprietors and partners.

We would like to raise three concerns with HB 187 and the requirement to use hours as opposed to payroll as a basis for premium even though we do understand the reasons for submitting this legislation.

First - the possibility raised concerning the impact on rates and whether such a system will provide proper rates for the class codes effected. This argument revolves around the concern as to whether the "hourly" data would be accurate and whether it could be verified. Verified being the key word. We must rely on the actuarial experts and both the actuarial experts from the National Council on Compensation Insurance

The New York State Rating Organization

and our own actuary oppose this legislation. ~~NECT~~, at the request of the General Building Contractors of New York, did a study regarding this very issue. The study showed 53% of the construction industry employers had some form of hourly records and significantly, the balance of the employers did not keep any hourly records. More important, none of the 53% had hours by class code. - Wages or gross payroll can be verified because such information must be maintained and reported to other governmental agencies. The difficulty with verification raises the question of equitable premium charges from employer to employer.

The second concern deals with the additional cost to the State Fund. We estimate it would cost us \$100,000 to \$200,000 depending on in-house or contracted services to develop a system to record, track and report on an hourly basis. It could also cost us operational costs of \$340,000 in the first year and \$240,000 thereafter for underwriting and auditing and it would undoubtedly increase actuarial costs by an undetermined amount. And based on the experts' testimony, we would incur these costs without assurance that the rates would be any more equitable and in fact may be less than equitable.

Our third concern deals with the effective date. The bill is effective July 1, 1992. This may give us enough time to develop and implement a computer system using contract services to record and track the data but does not allow us the time to collect the data. Presently our actuary uses three years data for rate calculation. We do not have any hourly data at this time. We would need to require employers to start submitting both payroll and hourly data possibly starting July 1, 1991. After we collect the data for FY 1992, 1993 and 1994 we could request our actuary to use only hourly data for the rates effective July 1, 1995. We also would have to perform extended audit services in an attempt to assure the data is accurate.

In summary, we are concerned about the reliability of the hourly data for rate making, the additional costs to the State Fund and the effective date if the bill passes.

James J. Murphy
5/18/91

1062

HOUSE OF REPRESENTATIVES VISITOR'S REGISTER

Labor & Employment Relations

COMMITTEE

BILL NO. 187

DATE 1/29/91

SPONSOR(S) Jerry Driscoll

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
RON H. JAMES 110 N. WARREN - Helena	IRONWORKERS LOCAL 841	✓	
RALPH BELTROUE 2210 3RD AVE NO - MT. FALLS	MONTANA STEEL CRAFTING / ALL STEEL BUILDINGS	✓	
MICHAEL BECKER PO BOX 4467 Great Falls	560TH Construction	✓	
BOB SHETTER	SHETTER CONCRETE CO	✓	
GENE VUCKOVICH	Aspen/Deer Lodge	✓	
JOHNNY MONTGOMERY	MONT. IRONWORKERS TRAINING PRG	✓	
JOHN C CALDWELL	Local 400 TNUOF	✓	
LARS ERICSON	MONT. ST. CARPENTERS	✓	
Randy Williams	Williams Const.	✓	
JACK H. STRICK	MT. DORA & HAZARD		
JOHN LAY	NAT. COUNCIL ON CONDO		✓
JOHN R. ALLEN	MONTANA CHAPTER INS NATION ELEC. CONTRACTORS	✓	
ROBERT K. MURPHY 1621 KARMER RD. Helena	LV 185 I.B.E.W.	✓	
Craig Kuchler 1420 Col. Gulch Helena	Carpenters Local #153	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

2 of 2

VISITOR'S REGISTER

LABOR & EMPLOY

COMMITTEE

BILL NO. 187

SPONSOR _____

DATE 1-29-91PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY.WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU WANT TO SUBMIT WRITTEN TESTIMONY.

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	SUP- PORT	OPP- OSE
3232-B TH AV. SO. BT FALLS MICHAEL S. MIRENKO	Plumbers + FITTERS #129	187	✓	
KIRIMIZENKO 2301 14TH AVE. SO. GREAT FALL	LABORER	187	✓	
Jacqueline Jurell	Am. Ins. Assoc	187		✓
GENIE PHILLIPS	ALLIANCE OF AMER INS	187		X
Dewey Hall	Bricklayers LOCAL 10	187	✓	
Jim Murphy	State Nurse	187		X
Don CHANCE	MT. BUNDY IND. ASSN	187	✓	
Robt A. Hamm	Teamsters	187	✓	
Super. Tonderson	MT St. Bly. brkdr	187	✓	
Don Judge - Helena	MT STATE AFL-CEO	HB187	✓	
Joe Wolfe	POLAR EL-EE	H2187	✓	
Rick Abraham	Montana Mtl.	HB187	✓	

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES, on February 5, 1991, at
3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

**HEARING ON HOUSE JOINT RESOLUTION
to**

RESTORE MONTANA'S DISLOCATED WORKER FUNDS

Motion/Vote: REP. DRISCOLL MOVED HOUSE JOINT RESOLUTION TO
RESTORE MONTANA'S DISLOCATED WORKER FUNDS BE INTRODUCED AND
SPONSORED BY THE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS.
EXHIBIT 1. Motion carried unanimously.

HEARING ON HB 356

Presentation and Opening Statement by Sponsor:

REP. GARY BECK, House District 48, said HB 356 is an act to
require appointment, to the Board of Personnel Appeals, of two

file retroactive unemployment benefits. REP. THOMAS said HB 141 as amended says if the school district guarantees their re-employment in September, they are not eligible for unemployment benefits. REP. DRISCOLL said yes.

REP. PAVLOVICH asked REP. DRISCOLL if secretaries would be included. REP. DRISCOLL said with the amendments, anybody who works for a school district that is given written assurance to be rehired and are rehired in September would be included.

REP. JOHNSON asked REP. DRISCOLL if the people who run the buses have a contract with the school district in time to give their employees the assurance. REP. DRISCOLL said if it's a contractor to a school district, for example, in Billings, those people can draw unemployment because they don't work directly for the school district. The towns where the school districts run their own bus system would be affected.

Vote:, HB 141 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 187

Motion: REP. DRISCOLL MOVED HB 187 DO PASS.

Motion/Vote: REP. DRISCOLL moved to amend HB 187. EXHIBIT 10. Motion carried unanimously.

Motion: REP. DRISCOLL MADE A SUBSTITUTE MOTION THAT HB 187 DO PASS AS AMENDED.

Discussion:

REP. DRISCOLL said SB 11, sponsored by Sen. Thayer, goes along with the package of bills about Workers' Compensation in the construction industry. That bill will change the preference for Montana contractors bidding against out-of-state contractors to make it reciprocal with those other states. Currently, if a Wyoming contractor comes to Montana, there is a 3 percent preference for a Montana contractor. If a Montana contractor goes to Wyoming there is a 5 percent preference. SB 11 will change it to 5 percent both ways. With HB 187, SB 11, and HB 342, the Montana contractors are more competitive in the surrounding states.

REP. WANZENRIED asked REP. DRISCOLL if he knew what the impact will be in shifting the rates away from the higher paying contractor, which are usually union contractors, to non-union in the short-term range. REP. DRISCOLL said if the Division were to do it correctly it would take a wage rate that is in between and the percentages now used to figure a dollar amount per hour. In the construction industry, except some contractors in the home building industry, every injured employee is eligible for the maximum benefit amount in weekly lost time anyway, and the medical bills are the same no matter what the income was before

the injury. The rate will change a few dollars either way depending what the employer is paying the employees.

REP. JOHNSON said there could be problems in record keeping. Perhaps the solution could be that the employers could pay the prevailing Workers' Compensation rate. Out-of-state employers would have to pay the Montana rate. This possibility needs to be researched.

Vote: HB 187 DO PASS AS AMENDED. Motion carried 17 to 1 with REP. WANZENRIED voting no.

EXECUTIVE ACTION ON HB 232

Motion: REP. COCCHIARELLA MOVED HB 232 DO PASS.

Motion/Vote: REP. O'KEEFE moved to amend HB 232. EXHIBIT 11. Motion carried unanimously.

Motion/Vote: REP. COCCHIARELLA MADE A SUBSTITUTE MOTION THAT HB 232 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 356

Motion/Vote: REP. DRISCOLL moved to amend HB 356. EXHIBIT 12. Motion carried unanimously.

Motion/Vote: REP. BECK MOVED HB 356 DO PASS AS AMENDED. Motion carried 16 to 2 with Reps. Benedict and Thomas voting no.

EXECUTIVE ACTION ON HB 342

Motion: REP. COCCHIARELLA MOVED HB 342 DO PASS.

Discussion:

REP. HOFFMAN said on Page 8, Paragraph 3, Line 20, the paragraph reads that a sole proprietor or a working member of a partnership can apply for an exemption from Workers' Compensation if he is contracting for cosmetologists, barber, or construction trades services. REP. WANZENRIED must not have intended for this to be included in the bill. Ms. McClure said it reads that a sole proprietor who holds himself out must carry Workers' Compensation coverage for his employees. Unless he is contracting, he may apply for an exemption for himself. REP. HOFFMAN said unless he is construction trades services, he may apply for himself. The barbers and cosmetologists have been put in the same category as the construction trade workers. Under the old statute the cosmetologists and barbers were completely removed. He suggested the way the bill should read, a sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor "except one who is contracting for cosmetologist services or barber services as defined in that

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/5/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

Amendments to House Bill No. 187
First Reading Copy

Requested by Representative Driscoll
For the House Committee on Employee and Labor Relations

Prepared by Eddye McClure
January 29, 1991

1. Title, line 11.
Following: "39-71-116,"
Insert: "39-71-402, 39-71-426,"
2. Page 5, line 4.
Following: "means"
Strike: "any"
Insert: "an"
3. Page 8, line 4.
Following: "2"
Insert: "and plan No. 3"
4. Page 8, line 9.
Following: line 8
Insert: "Section 4. Section 39-71-402, MCA, is amended to read:
"39-71-402. Extraterritorial application and reciprocity --
exception. (1) If a worker employed in this state who is subject
to the provisions of this chapter temporarily leaves the state
incidental to that employment and receives an injury arising out
of and in the course of such employment, the provisions of this
chapter shall apply to such worker as though he were injured
within this state.
(2) If a worker from another state and his employer from
another state are temporarily engaged in work within this state,
this chapter shall not apply to them:
(a) if the employer and employee are bound by the
provisions of the workers' compensation law or similar law of
such other state which applies to them while they are in the
state of Montana; and
(b) if the Workers' Compensation Act of this state is
recognized and given effect as the exclusive remedy for workers
employed in this state who are injured while temporarily employed
in such other state.
(3) A certificate from an authorized officer of the
workers' compensation department or similar agency of another
state certifying that an employer of such other state is bound by
the Workers' Compensation Act of the state and that its act will
be applied to employees of the employer while in the state of
Montana shall be prima facie evidence of the application of the
workers' compensation law of the certifying state.
(4) The department may, with the approval of the governor,
enter into agreements with workers' compensation agencies of
other states for the purpose of promulgating regulations not
inconsistent with the provisions of this chapter to carry out the
extraterritorial application of the workers' compensation laws of

2/5/91
HB 187

the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."

Renumber: subsequent sections

100-91
FOR

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that House Bill 187 (first reading copy -- white) do pass as amended.

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 11.

Following: "39-71-116,"

Insert: "39-71-402, 39-71-426,"

2. Page 5, line 4.

Following: "means"

Strike: "any"

Insert: "an"

3. Page 8, line 4.

Following: "2"

Insert: "and plan No. 3"

4. Page 8, line 9.

Following: line 8

Insert: "Section 4. Section 39-71-402, MCA, is amended to read:

"39-71-402. Extraterritorial application and reciprocity -- exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another

February 6, 1991
Page 2 of 2

state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."
Renumber: subsequent sections

CHAIRMAN--RICHARD MANNING
NORMAL SCHEDULE==> SITE: RM 413/415

DAYS: T,TH,S

TIME: 3:00 P.M.

SECRETARY-LINDA CASEY

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0018 DRISCOLL, JERRY	1/14	1/22		CONCUR REVISE QUALIFICATION FOR JOURNEYMAN PLUMBER LICENSE		1/22
HB0028 HANSON, SONNY	2/01	2/12		ADVERSE RPT ADOPT REQUIRE PUBLIC CONTRACTS & BID SPECIFICATIONS TO STATE PREVAILING WAGE RATE		4/03
HB0060 HARRINGTON, DAN	2/04	2/12		CONCUR EXCLUDE MEAL ALLOWANCE FROM MINIMUM WAGE PAID TO MONTANA EMPLOYEES		3/13
HB0068 WHALEN, TIM	2/01	2/07		CONCUR REVISE ELIGIBILITY AND DISQUALIFICATION FOR UNEMPLOYMENT INSURANCE BENEFITS		3/28
HB0141 HARRINGTON, DAN	2/26	3/19		ADVERSE RPT ADOPT PROVIDE UNEMPLOYMENT INSURANCE BENEFITS NONPROFESSIONAL SCHOOL EMPLOYEES		4/02
HB0152 HARRINGTON, DAN	2/05	2/14		CONCUR AS AMENDED REVISE STATE MINIMUM WAGE LAW TO CONFORM WITH FEDERAL LAW		4/01
HB0187 DRISCOLL, JERRY	2/12	3/14		CONCUR AS AMENDED REVISE WORKERS' COMPENSATION COMPUTATION FOR CONSTRUCTION INDUSTRY		4/02
HB0204 RICE, SHEILA	2/05	2/14		CONCUR AS AMENDED REVISE OVERTIME COMPENSATION PERIODS IN CONSTRUCTION INDUSTRY		4/03
HB0232 CLARK, ROBERT	2/12	3/07		CONCUR HIGHWAY PATROL DISCIPLINARY APPEAL THROUGH COLLECTIVE BARGAINING		3/13
HB0251 DRISCOLL, JERRY	3/20	4/02		CONCUR AS AMENDED EXTENDING LIFE OF WORKERS' COMPENSATION JOINT SELECT COMMITTEE		4/03
HB0256 DRISCOLL, JERRY	2/06	2/12		CONCUR REVISE CRITERIA USED TO DETERMINE ELIGIBILITY AND PAYMENT OF UI BENEFITS		3/06

HOUSE BILL NO. 187

INTRODUCED BY DRISCOLL, HARP, WANZENRIED, THAYER, MANNING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS' COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING THAT PREMIUM RATES TO BE PAID FOR WORKERS' COMPENSATION FOR THE CONSTRUCTION INDUSTRY BE COMPUTED ON THE NUMBER OF HOURS WORKED RATHER THAN ON A PERCENTAGE OF PAYROLL; AMENDING SECTIONS 33-16-1004, 39-71-116, 39-71-402, 39-71-426, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-16-1004, MCA, is amended to read:

"33-16-1004. Rates -- considerations -- methods -- standards. All rates shall must be made in accordance with the following provisions:

(1) Due consideration shall must be given to:

(a) past and prospective loss experience within and outside this state; ~~to;~~

(b) catastrophe hazards, if any; ~~to;~~

(c) a reasonable margin for underwriting profit and contingencies; ~~to;~~

(d) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; ~~to;~~

(e) past and prospective expenses, both countrywide and those specially applicable to this state; ~~;~~

(f) investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this state; and to

(g) all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof of insurance for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which that establish standards for measuring variations in hazards or expense provisions, or both. Such The standards may measure any difference among risks that can be demonstrated to have a

probable effect upon losses or expenses.

(4) Rates ~~shall~~ may not be excessive, inadequate, or unfairly discriminatory.

(5) Except to the extent necessary to meet the provisions of subsections (1) through (3), uniformity among insurers in any matter within the scope of this section is neither required nor prohibited."

Section 2. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest

whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury ~~(however, such a parent is a beneficiary only when if~~ no beneficiary, as defined in subsections (3)(a) through (3)(d) ~~of this section, exists);~~ and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury ~~(however, such a brother or sister is a beneficiary but~~ only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e) ~~of this section, exists).~~

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation

1 of the employer.

2 (5) "Child" includes a posthumous child, a dependent
3 stepchild, and a child legally adopted prior to the injury.

4 (6) "Construction industry" means any AN activity in
5 connection with the erection, alteration, repair,
6 replacement, renovation, installation, or demolition of a
7 building, highway, bridge, or structure.

8 {6}{7} "Days" means calendar days, unless otherwise
9 specified.

10 {7}{8} "Department" means the department of labor and
11 industry.

12 {8}{9} "Fiscal year" means the period of time between
13 July 1 and the succeeding June 30.

14 {9}{10} "Insurer" means an employer bound by
15 compensation plan No. 1, an insurance company transacting
16 business under compensation plan No. 2, the state fund under
17 compensation plan No. 3, or the uninsured employers' fund
18 provided for in part 5 of this chapter.

19 {10}{11} "Invalid" means one who is physically or
20 mentally incapacitated.

21 {11}{12} "Maximum healing" means the status reached when
22 a worker is as far restored medically as the permanent
23 character of the work-related injury will permit.

24 {12}{13} "Order" means any decision, rule, direction,
25 requirement, or standard of the department or any other

1 determination arrived at or decision made by the department.

2 {13}{14} "Payroll", "annual payroll", or "annual payroll
3 for the preceding year" means the average annual payroll of
4 the employer for the preceding calendar year or, if the
5 employer shall not have operated a sufficient or any length
6 of time during such calendar year, 12 times the average
7 monthly payroll for the current year. However, an estimate
8 may be made by the department for any employer starting in
9 business if no average payrolls are available. This estimate
10 is to be adjusted by additional payment by the employer or
11 refund by the department, as the case may actually be, on
12 December 31 of such current year. An employer's payroll must
13 be computed by calculating all wages, as defined in
14 39-71-123, that are paid by an employer.

15 {14}{15} "Permanent partial disability" means a
16 condition, after a worker has reached maximum healing, in
17 which a worker:

18 (a) has a medically determined physical restriction as
19 a result of an injury as defined in 39-71-119; and

20 (b) is able to return to work in the worker's job pool
21 pursuant to one of the options set forth in 39-71-1012 but
22 suffers impairment or partial wage loss, or both.

23 {15}{16} "Permanent total disability" means a condition
24 resulting from injury as defined in this chapter, after a
25 worker reaches maximum healing, in which a worker is unable

to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(16)~~(17) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(17)~~(18) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(18)~~(19) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(19)~~(20) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(20)~~(21) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(21)~~(22) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(22)~~(23) "Year", unless otherwise specified, means calendar year."

NEW SECTION. **Section 3.** Premium rates for construction industry. The premium rates under plan No. 2 AND PLAN NO. 3 to be paid for workers' compensation insurance for the construction industry must be computed on the number of hours worked for each occupation classification rather than on a percentage of payroll.

SECTION 4. SECTION 39-71-402, MCA, IS AMENDED TO READ:

"39-71-402. Extraterritorial application and reciprocity -- exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for

workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

SECTION 5. SECTION 39-71-426, MCA, IS AMENDED TO READ:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of

this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."

Section 6. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(2)(a) through (2)(d), (3)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly

wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116~~(2)(e)~~(3)(e) and ~~(2)(f)~~ (3)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(2)(b)~~(3)(b) through ~~(2)(d)~~ (3)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116~~(2)~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 7. Section 39-71-723, MCA, is amended to read:

"39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections ~~(2)(e)~~ (3)(e) and ~~(2)(f)~~ (3)(f) of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the department."

Section 8. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following

1 definitions apply:

- 2 (1) "Beneficiary" is as defined in 39-71-116.
 3 (2) "Child" is as defined in 39-71-116.
 4 (3) "Department" means the department of labor and
 5 industry.
 6 (4) "Disablement" means the event of becoming
 7 physically incapacitated by reason of an occupational
 8 disease from performing work in the worker's job pool.
 9 Silicosis, when complicated by active pulmonary
 10 tuberculosis, is presumed to be total disablement.
 11 "Disability", "total disability", and "totally disabled" are
 12 synonymous with "disablement", but they have no reference to
 13 "permanent partial disability".
 14 (5) "Employee" is as defined in 39-71-118.
 15 (6) "Employer" is as defined in 39-71-117.
 16 (7) "Independent contractor" is as defined in
 17 39-71-120.
 18 (8) "Insurer" is as defined in 39-71-116.
 19 (9) "Invalid" is as defined in 39-71-116.
 20 (10) "Occupational disease" means harm, damage, or death
 21 as set forth in 39-71-119(1) arising out of or contracted in
 22 the course and scope of employment and caused by events
 23 occurring on more than a single day or work shift. The term
 24 does not include a physical or mental condition arising from
 25 emotional or mental stress or from a nonphysical stimulus or

1 activity.

- 2 (11) "Order" is as defined in 39-71-116.
 3 (12) "Pneumoconiosis" means a chronic dust disease of
 4 the lungs arising out of employment in coal mines and
 5 includes anthracosis, coal workers' pneumoconiosis,
 6 silicosis, or anthracosilicosis arising out of such
 7 employment.
 8 (13) "Silicosis" means a chronic disease of the lungs
 9 caused by the prolonged inhalation of silicon dioxide (SiO)
 10 and characterized by small discrete nodules of fibrous
 11 tissue similarly disseminated throughout both lungs, causing
 12 the characteristic x-ray pattern, and by other variable
 13 clinical manifestations.
 14 (14) "Wages" is as defined in 39-71-123.
 15 (15) "Year" is as defined in 39-71-116(8)--and
 16 39-71-116(22)."

17 **Section 9.** Section 39-73-108, MCA, is amended to read:
 18 "39-73-108. Payment of benefits where person entitled
 19 is in institution. If any person who is entitled to benefits
 20 under this chapter shall be an inmate in any Montana state
 21 institution, benefits shall not be paid to him but shall be
 22 paid his beneficiary, if any, as defined in 39-71-116(2)."

23 **NEW SECTION. Section 10.** Codification instruction.
 24 [Section 3] is intended to be codified as an integral part
 25 of Title 39, chapter 71, part 22, and the provisions of

HB 0187/02

- 1 Title 39, chapter 71, part 22, apply to [section 3].
- 2 NEW SECTION. **Section 11.** Effective date. [This act] is
- 3 effective July 1, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0187, third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring that investment income earned or accrued by certain workers' compensation insurers be considered when determining premium rates; defining construction industry; requiring that premium rates to be paid for workers' compensation for the construction industry be computed on the number of hours worked rather than on a percentage of payroll; amending existing statutes; and providing a delayed effective date.

ASSUMPTIONS:State Fund:

1. The proposed amendment to include investment income in the calculation of workers compensation insurance premiums is compatible with 39-23-2320, 39-23-2321 and 39-23-2327, MCA, which require the State Fund to include investment income in the calculation of State Fund premium rates.
2. The proposed legislation will affect approximately 3,000 currently insured (12% of 26,000) based on FY90 statistics.
3. Individual risk will be assigned both manpower and payroll class codes. Computer system modifications will be necessary to accommodate the hourly-based construction industry while retaining all other industries on a payroll basis.
4. Since payroll is verifiable and work hours are not verifiable, the State Fund must gather both payroll and work hours data to establish work hour premium rates. Initial work hour data would be gathered by means of a survey sent in conjunction with quarterly reports for firms assigned a construction code. Once computer programs are ready, work hour information will be entered for rate analysis.
5. The proposed legislation would require 2.00 FTE program coordinators to consult with those insured, monitor payroll reports, and conduct surveys; and 6.00 FTE auditors to measure compliance.

Department of Labor and Industries:

6. The Uninsured Employers' Fund (UEF) uses Plan 3 rates. A separate system would need to be developed for an hourly rate structure with new procedures to process audits, penalties, and claims for uninsured construction industry employers.
7. Approximately 75 workers' compensation classification codes will be affected by the proposed legislation.
8. Implementing the proposed legislation will require a 1.00 FTE compliance specialist at grade 12/step 2 plus associated costs for work materials, telephone, supplies and travel.

FISCAL IMPACT:

see next page



ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

2-14-91


BULL SHIT

JERRY L. DRISCOLL, PRIMARY SPONSOR

DATE

Fiscal Note for HB0187, third reading.

HB 187
3rd. Rdg.

FISCAL IMPACT:

State Fund:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	0.00	8.00	8.00	0.00	8.00	8.00
Personal Services	0	217,122	217,122	0	227,118	227,118
Operating Costs	0	182,043	182,043	0	155,072	155,072
Equipment	0	75,744	75,744	0	0	0
Total	0	474,909	474,909	0	382,190	382,190
Funding:						
Proprietary Fund	0	474,909	474,909	0	382,190	382,190

Dept of Labor/Industry:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	0.00	1.00	1.00	0.00	1.00	1.00
Personal Services	0	24,047	24,047	0	23,992	23,992
Operating Costs	0	17,553	17,553	0	15,453	15,453
Equipment	0	3,800	3,800	0	0	0
Total	0	45,400	45,400	0	39,445	39,445
Funding:						
State Special	0	45,400	45,400	0	39,445	39,445

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Reduction in workers' compensation premiums would result in reduced penalty assessments and a reduction in the fund balance of the Uninsured Employers' Fund.
2. Decreased premiums with no reduction in benefits would reduce the fund balance of the Uninsured Employers' Fund.

TECHNICAL NOTES:

1. Discrepancies exist in the definition of "construction" among NCCI, HB187, HB342 and other references in the insurance industry. Recommend the proposed legislation use the Standard Industrial Classification (SIC) manual, 1987 edition, as a guide to define the construction industry.
2. The reporting requirements for owners, partners and corporate officers is unclear. Reporting requirements for owners and partners are currently an elected payroll amount within set minimum and maximum amounts. For corporate officers, the reporting requirements are actual payroll within set minimum and maximum amounts.

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 14, 1991, at 3:30 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON HOUSE BILL 187

Presentation and Opening Statement by Sponsor:

Representative Jerry Driscoll told the Committee House Bill 187 would change the determination of what workers' compensation premium from percentage of payroll to hourly in the construction industry. He explained an employer paying good wages in the construction industry is subsidizing the low-wage payer. House Bill 187 is an attempt to equalize the premium in the construction industry. Employers in the construction industry keep records of hours worked in order to prepare bids. He commented the fiscal note has several "things which are not even in the bill", i.e., the insured employers fund. The need for 8 FTE to audit is not necessary. Union contractors are audited in the private sector because fringe benefits are paid by the hour.

Proponents' Testimony:

Gene Fenderson of the Montana State Building and

Construction Trades Council which represents eleven difference international unions across Montana spoke in favor of House Bill 187. He told the Committee the situation in the workers' compensation in Montana is in a position of "almost disastrous proportions" to those contractors willing to pay a fair and decent living wage to their employees. The present system is based on wages per 100. House Bill 187 is based on hours worked. He explained those employers paying low wages, work employees under same working conditions (sometimes the same job sites), have the same coverage for medical costs for employees, their employees draw the same weekly benefits, receive the same lump-sum payouts; that employer will pay half the workers' compensation premium cost as an employer paying a higher wage. He pointed out across the United States in areas such as Delaware, Pennsylvania, Missouri, New Mexico, and Oregon have looked into this issue. The conclusion in all these states is the current system is unfair. He explained the handout he presented to the Committee (Exhibit #1).

Larry Kenney, Executive Secretary of the Washington State Labor Council, AFL-CIO spoke in support of House Bill 187 from prepared testimony (Exhibit #2).

Don Judge of the Montana State AFL-CIO spoke from prepared testimony in favor of House Bill 187. (Exhibit #3)

Ron James, Business Agent of the Ironworkers spoke in support of House Bill 187. Mr. James explained young ironworkers go through a four year program. They are instructed how to work safely because this is a high risk trade. The non-union contractors do not. Non-union contractors coming in from Wyoming, for example, pays Wyoming's workers' compensation which is lower than Montana's. When Montana contractors go to Wyoming they pay Montana's workers' compensation. He told the Committee this legislation would "make it fair".

Lars Ericson of the Montana State Council of Carpenters spoke in support of House Bill 187. He told the Committee in the construction industry a "price tag" has to be put on a finished product before knowing the actual cost. Material costs must be "second guessed", and the weather must be predicted months, and even years, in advance. The workers' compensation rules are inequitable. Currently a contractor must pay \$17.48 per \$100 of wages for every commercial carpenter he employees. The rates for ironworkers is over 100% with plumbers around 50%. If a contractor is paying a carpenter \$13.00 the workers' compensation burden is \$2.27 per hour or \$90.90 for a 40 hour week. If the competitor is paying \$10.00 per hour, workers' compensation burden is \$1.75 per hour or \$69.92 for a 40 hour week. A third contractor paying \$8.00 per hour, the workers' compensation burden would be \$1.40 per hour or \$55.94 for a 40 hour week. Hospitals and doctors charge the same rate no matter how much the employer is paid, nor how much the employer paid into workers' compensation.

Rick Abraham of Montana Metal Buildings spoke in support of House Bill 187. Mr. Abraham told the Committee current rates are \$60 to \$70 per 100. He explained on larger jobs they have been out bid by 1 and 2 percent. In comparing his workers' compensation to his competitor, Mr. Abraham may have the job by 5 to 6 percent.

Bob Murphy, Business Manager of Local 185, International Brotherhood of Electrical Workers told the Committee House Bill 187 is not non-union v. union legislation. He explained it is a bill in which "everybody pays their fair share".

Johnny Monahan, Director of the Montana Ironworkers Joint Apprenticeship/Journeyman Training Program spoke in support of House Bill 187 from prepared testimony (Exhibit #4)

Michael Mizenko, Business Manager for Plumbers and Pipefitters in Great Falls, representing Montana Plumbers and Pipefitters and Locals 30 (Billings), 41 (Butte), 459 (Missoula), and 139 (Great Falls) spoke in support of House Bill 187. He told the Committee 90% of plumbers and pipefitters are licensed to work in Montana homes.

Bob Nommensen of Sletten Construction told the Committee he is one of the employers "being penalized for paying higher wages". He explained the risk to worker injury is directly related to the hours worked rather than the amount of pay. He commented higher paid employer are more experienced, better trained and safer. He stated he were paying higher workers' compensation premiums than employers paying lower wages. Reporting hours would be "an ease" since records provide hours, as do records of most contractors. These records are necessary to remain competitive in the industry. He spoke in strong support of House Bill 187.

Opponents' Testimony:

Jacqueline Terrell, representing the American Insurance Association spoke from prepared testimony in opposition to House Bill 187. (Exhibit # 5)

Gene Phillips of the Alliance of Insurers spoke in opposition to House Bill 187. Mr. Phillips told the Committee the Alliance is a trade association whose member companies account for approximately 25% of all workers' compensation premiums written in by insurance companies in Montana. He explained shifting of the premium computation from a payroll base to a man-hour base will tend to create inequities. It may decrease premiums for large construction employers and increase premiums for all other employers. He commented regardless of what calculation is used to develop a premium, a certain amount must be collected to keep the system funded adequately. Any short-fall from one segment will need to be made up by the other. He stated a measurement of exposure to loss is essential to the

proper functioning of the insurance process. The quantity used in these measures is the premium base. The premium base to be acceptable must vary with the exposure to the hazard and to be developed with the data which is readily available and verifiable. While both payroll and hours worked will meet the first criteria, hours worked does not meet the test for availability and verifiability at the present time. In order to be of any value in insurance pricing it would be necessary to collect work hour data for several years. Even if collected such data would not be subject to external checks and balances which is central to a workable and fair evaluation process. The idea of using man-hours data to establish premium levels is not new. It has been studied in many jurisdictions in the past ten years and has been rejected in all. He suggested there may be some other method to make the system fair. He offered to work with the proponents to achieve that end.

Pat Sweeney representing the State Fund spoke in opposition to House Bill 187 from prepared testimony (Exhibit #6)

Questions From Committee Members:

Senator Doherty asked Ms. Terrell what the percentage of private sector insurance is in the construction industry for workers' compensation. Ms. Terrell told the Committee she did not have the percentage.

Senator Doherty asked how much is state fund and how much is private sector. Ms. Terrell explained the state fund had approximately 65% of the market share of workers' compensation in Montana.

Senator Doherty asked Ms. Terrell if those figures were consistent with the construction industry. Ms. Terrell told the Committee it was her understanding they are not. She explained the bulk of the construction industry is insured with the state fund.

Senator Lynch asked Pat Sweeney if an individual is working construction and loses an arm, he would receive the benefit no matter what wage the construction company pays. Mr. Sweeney explained the benefit is based upon wage. For a permanent, 50% of the state's average weekly wage would be received.

Senator Lynch asked if it were fair "that one guy is paying so much less than another guy". He commented there is a fairness issue no one is addressing except the proponents. Mr. Sweeney told the Committee he did not feel it were a fairness issue, that none of "us live in a fair system". He explained the collection of premium in workers' compensation has been the same for the last 75 years. In working with the bill's sponsor an alternative has been offered which would satisfy of the concerns of the construction industry and possibly create the fairness Senator Lynch is speaking of.

Senator Towe asked Ms. Terrell if it would be impossible to obtain and verify records. Ms. Terrell told the Committee the problem with hours worked is those records are not kept for any other purpose. She commented union employers keep those records, but not everyone is an union employer or employee. In many business those records are not kept. The advantage of payroll records is they are kept for federal tax purposes, social security purposes, etc.

Senator Towe asked Representative Driscoll about Mr. Sweeney's point of the inability of the fund to get "geared up" for 1992 because of the actuarial problems and others. Representative Driscoll told the Committee the actuary said "we were \$29 million in the hole", a year later a report said it was \$130 million. He stated "he can get geared up, they just don't like the bill".

Senator Towe asked Representative Driscoll why on Page 9, Section 4, Lines 17 and 18 it states "provisions of this section do not apply to the construction industry". He asked if this were from another bill, or is the first time the construction industry is not allowed to apply to the temporary leaves from the state provisions. Representative Driscoll stated it has to do extra-territorial application of reciprocity agreements, and they do not want reciprocity agreements. He told the Committee this is a very important part of the bill. Contractors cannot come into Montana where there is an artificial system where millions of dollars of coal tax has subsidized the workers' compensation.

Closing by Sponsor:

Representative Driscoll told the Committee the short-fall the opponents spoke of would not be shifted to other class codes. He explained workers' compensation does not work that way. He stated employers have to know how many hours worked if they wish to take the credit for not paying premium on overtime. The only private contractor in Montana which is written by a private insurance company is Bechtel Corporation and they own the insurance company. In the eastern states there are law suits over the inequity because of the high-paying employer subsidizing the low-paying employer. He commented there was testimony stating "some people would cheat". "They cheat now, they pay cash". He told the Committee most employers are honest. He commented there are several states which have addressed this: New Mexico, Washington, Delaware, Pennsylvania, Missouri, and Oregon. Representative Driscoll told the Committee an amendment will be offered which will be a percentage, but if an employer pays more than the average weekly wage, the employer gets a credit; if they pay less, they will get a surcharge.

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/14/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING			
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

Amendments to House Bill No. 187
Third Reading Copy

For the Senate Committee on Labor

Prepared by Eddye McClure
February 15, 1991

1. Page 5, lines 4 through 7.

Following: "any"

Strike: remainder of line 4 through "structure" on line 7

Insert: "the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site"

2. Page 15, line 2.

Following: line 1

Insert: "NEW SECTION. Section 11. Coordination instruction.

The definition of "construction industry" in [section 2(6) of this act] is intended to coordinate with the definitions of "construction industry" in House Bills No. 204 and 342."

Renumber: subsequent section



Heavy & Highway NEWS

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/14/91

BILL NO. HB 187

NATIONAL JOINT HEAVY AND HIGHWAY CONSTRUCTION COMMITTEE

111 MASSACHUSETTS AVENUE, N. W.

WASHINGTON, D. C. 20001 • (202) 842-2713

Vol. 5, No. 4 December, 1989

Workers' Compensation

THE HIDDEN NON-UNION ADVANTAGE

We've been asleep at the switch! There is a major cost factor in construction that prohibits union contractors from being competitive, yet most of us know little about it. More surprising, the labor movement has done practically nothing to change this problem even though it constitutes a greater competitive disadvantage to union contractors than wages, fringes and working conditions combined. It directly affects every construction worker in the United States, and quite possibly, is the single most important issue union contractors and unions face today. For this reason we are presenting this article on Workers' Compensation insurance in hopes that by making you aware of the problem, you can join with us in making changes to the current laws.

History

In the early 1900's, prior to any Workers' Compensation laws, personal injury suits were filed in the courts and employees had to prove employer negligence in order to collect damages. As the United States grew from an agricultural economy to an industrial economy the number of personal injury suits increased and, as you might imagine, was a slow and uncertain legal process for the employer and the injured employee.

In 1911, the first Workers' Compensation laws were enacted in the United States. Today, all 50 states have Workers' Compensation laws which serve to relieve employers of liability from common-law suits involving negligence. While these laws do provide workers with "reasonable" income" and medical benefits for job-related injuries, let there be no mistake that Workers' Compensation laws have provided a greater benefit to employers.

In 1976, a government task force studying Workers' Compensation laws found that unless changes were made, Workers' Compensation would become more expensive, less equitable, and less effective. Guess what? No changes have been made and, as you will see, the system is now bordering on a total collapse in many states. The U.S. Department of Health and Human Services estimated that employers spent over \$34.1 billion on Workers' Compensation insurance in 1986. This was \$4.8 billion or 16% higher than 1985, and another 16% higher than 1984.

The Problem

Rates for private Workers' Compensation insurance are universally based on a certain cost per each \$100 of payroll depending on the classification of work. This means that a union employer paying a higher wage rate has a higher Workers' Compensation insurance cost even though studies show that higher paid union workers work safer than their non-union counterparts. This is true even though each contractor has a "modifier" which is supposed to adjust costs according to accident rates. It is true that certain classifications of work are more dangerous than others, but left unchecked, the non-union contractor will cheat by reporting workers in lower cost classifications. As you will see, the higher cost of the insurance because it is based on payroll costs, coupled with the non-union contractor's ability to cheat, can and does give unions a disadvantage that is impossible to make up through wages, fringes, and working conditions. If you think Davis-Bacon cheaters have an unfair cost advantage, get a load of this.

Premium rates vary from state-to-state as well as classifications. Costs can range from 7% to more than 100% of payroll costs, and average an estimated 30%. For example, rates per \$100 of payroll can be as low as \$2.27 for interior electrical wiring in New Jersey to an unbelievable \$162.26 for structural steel erection in Montana. Moreover, in Montana the spread based on classification ranges from \$8.30 to \$162.26 per \$100 of payroll. You'd be pretty naive to believe that Montana contractors are properly classifying their employees.

If it's not bad enough that they cheat, non-union contractors have found myriads of ways to beat the system entirely. One of the easiest ways with little likelihood of getting caught is known as "employee leasing." This system, which is heavily practiced in Florida, works like this: A developer carries the Workers' Compensation insurance on a project, but has no employees. If a contractor's employee gets injured, he/she is placed on the developer's payroll, a minimum premium is paid and presto, the employee is qualified for benefits. With all the money going out and little coming in, it is easy to understand why Florida insurers were asking for a 47.7% increase in rates.

(continued on back page)

(Workers' Compensation continued)

Another scam to eliminate paying Workers' Compensation is so-called independent contractors such as dump truck drivers. With virtually no enforcement, contractors are paying dump truck drivers a fixed fee for their truck which is supposed to cover the driver's wage plus an amount for the truck leasing. In this way, the contractor most likely is paying below Davis-Bacon wages, withholding no income taxes, paying no payroll taxes, and paying no Workers' Compensation insurance. We're surprised that anyone has a legitimate trucking business anymore.

The bottom line is that legitimate contractors who properly classify workers are being forced out of business or forced to cheat. The result is that 21 states have approved rate increases during a six-month period. Florida and Texas, states with a high concentration of non-union employers, have asked for rate increases of 47% and 35%, respectively. Unless changes are made, rate increases will continue which will further reduce the number of legitimate paying contractors and exacerbate the problem. Workers' Compensation is on a collision course!!!

Oregon Study

To prove that the system is "bass ackwards" in that higher paid workers are safer and yet must pay a higher premium, a study was done in Oregon that graphically demonstrates this fact. Mandated by the Oregon legislature, the study involved a year-long survey of the state's rating system conducted by the National Council of Compensation Insurance (NCCI) and an independent market research firm. "The data indicates that the system at the front end does have inequities with regards to the high wage union employers," said the NCCI's Director of National Affairs. This can be seen by looking at the premium and loss data shown below:

Average Weekly Wage	Number of Employers	Premium	Total Losses
Less than \$101	59	\$ 184,976	\$ 89,325
\$101-200	151	\$ 419,834	\$ 287,496
\$201-300	381	\$ 1,545,600	\$ 450,136
\$301-400	505	\$ 3,198,836	\$ 1,027,442
\$401-500	409	\$ 5,352,771	\$ 2,013,625
\$501-600	221	\$ 4,008,245	\$ 860,254

Average Weekly Wage	Number of Employers	Premium	Total Losses
\$601-700	151	\$ 2,349,297	\$ 595,415
\$701-800	55	\$ 1,973,052	\$ 291,610
Over \$801	51	\$ 678,731	\$ 111,692

For example, compare the data from employers that pay average weekly wages of \$201 to \$300 with those paying \$701 to \$800. The employers in the lower paying category actually paid 25% less in premiums (\$1.5 million) than the higher paying category (\$2 million) while they recorded 54% more in losses (\$450,136 versus \$291,610).

The study also looked at the modifier to see if it adjusted the premiums based on the loss experience of contractors and found "the modified loss ratio leads to the same conclusions . . ."

Possible Solutions

The most logical solution to the problem of unfairly penalizing higher paying employers is to change the premium computation method from \$100 of payroll to hours worked. After all, an employee's exposure to having a work-related accident is just as great no matter how much he/she is paid. Another solution would be to change the premium based on type of work being performed instead of classifications. In other words, why is a bridge iron worker charged a higher premium than the carpenter working alongside him? These are simple solutions to a complex problem which may prove very difficult to change.

We believe the most logical and equitable way to solve the problem is to pass federal legislation that sets forth minimum guidelines. Certainly, given the disparity of premium costs and benefits between the various states, we wouldn't have to look very far to find justification for a federal Workers' Compensation program. Tackling the problem on a state-by-state basis may be the least effective route to take, but it would certainly be worth the effort.

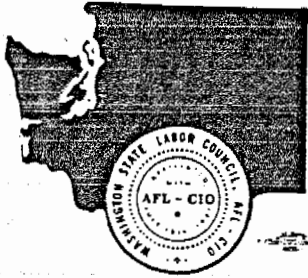
Finally, in case our readers are not convinced that the current Workers' Compensation system is biased toward non-union contractors, the Maryland Chamber of Commerce had this to say: "Calculating Workers' Compensation rates on hours worked rather than current practice of basing them on payroll removes the cost advantage that non-unionized labor firms have on the Workers' Compensation rates."

That's the final word to prove our point.

**National Joint Heavy and
Highway Construction Committee
111 Massachusetts Ave., N.W.
Washington, D.C. 20001**

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Washington State Labor Council, AFL-CIO

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Montana State Legislature, Senate Labor Committee
Workers' Compensation Premium Basis, House Bill 187
March 14, 1991

Lawrence Kenney, President
Washington State Labor Council, AFL-CIO
201 Elliott Avenue West, Seattle, WA 98119

Washington State is unique in its method of assessing workers' compensation premiums. Premiums in our state are based on the number of hours worked. In every other state and jurisdiction, the premium basis is payroll. Washington State's system works for us. We recommend it for your consideration.

The hours of exposure method was instituted in our state in the 1930's. During the Great Depression, wages were being cut but not the hours of work. Lower wages reduced income to the state fund but it did not reduce the number of accidents. After the premium base was changed, fund income was stabilized.

In 1971, the Washington State workers' compensation agency was given statutory authority to change the basis for assessing premiums from hours of exposure to a payroll-based system. A hearing was held to consider making the change. Employers were virtually unanimous in their opposition. The change was not made.

Last fall, our state workers' compensation agency held six meetings with agriculture employers in different parts of the state to explore instituting a payroll-based premium system for farm employers. Again, the opposition was unanimous. The idea has been dropped.

Several years ago, our State Legislature created a commission on Efficiency and Accountability in State government. I have been a member of that commission since its inception. The commission, at the request of a state agency, will review its operations and make suggestions for change. Last year, our state workers' compensation agency requested that we review its employer services division. The agency had problems, just as any large organization does. But none of the premium collection problems were the result of the method of assessing premiums. As a matter of fact, the study team didn't even consider the unique character of our premium base to be worth mentioning.

Washington State has no special problems of determining the accuracy of premiums based on hours. Employers already keep hourly records. Payroll

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 3/14/91

BILL NO. HB 187

is based on the number of hours worked. Eligibility for most fringe benefits requires a minimum number of hours. For those of us who don't work a specified number of hours, premiums are paid on the assumption that we work forty hours a week.

Washington employers are satisfied with our present system. It is fairer and better reflects the actual risk of on-the-job injury or illness. In addition, it keeps employers aware of premium increases. Premiums based on payroll can be increased without ever changing the rate. If wages rise, premiums based on payroll rise by the same amount, even though the probability of injury or illness has not changed. Under the hours of exposure method, there are no hidden rate increases. When premium increases are proposed, the amount is clearly stated and is not partially obscured by wage changes.

Industrial injuries and diseases are not a function of the rate of pay, but of the number of hours worked. The more hours on the job, the more likely that an injury or illness will occur. The rate of pay is a poor measure of exposure. As a matter of fact, higher wage workers are more likely to be skilled and experienced and are less likely to be injured on the job.

The most persuasive argument for the payroll system is the presumed relationship between wages and industrial injury costs. That argument doesn't stand up under scrutiny. Claims which involve only medical costs comprise more than 80 per cent of all claims and almost half of the costs. Medical costs are not related to wages. They are the same for everyone. The relationship between income benefits and workers' compensation costs ends when the maximum benefit is reached. In Washington the maximum benefit is equal to the state's average wage. The maximum limits benefits for almost a quarter of the injured workers.

Premiums based on hours rather than wages allow for a more accurate assessment of reserve requirements. Hours of work change less from year to year than wage levels. During periods of fluctuating wages, insurers have to hedge by setting premiums high enough to ensure that projected liabilities will be met. That may result in higher than necessary premiums and excess reserves.

The basis for premium assessment will not affect total workers' compensation costs. It will merely shift costs among employers. In Washington, we have adopted a policy that employers who pay decent wages and have fewer injuries on the job should not be required to subsidize low-wage, unsafe employers. Under the hours of exposure method, all employers in the same classification pay the same basic rate, modified only by their individual claims experience. That helps keep employers on the same competitive level. Firms which pay higher than average wages are not penalized by also having to pay higher workers' compensation premiums.



DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 187 BEFORE THE SENATE LABOR AND
EMPLOYMENT RELATIONS COMMITTEE, MARCH 14, 1991

Mr. Chairman, members of the committee, for the record my name is Don Judge and I'm here today representing the Montana State AFL-CIO in support of House Bill 187.

In 1987, the Montana State AFL-CIO supported a similar measure introduced by Representative Driscoll. Unfortunately, for workers and construction contractors, the measure failed. That has meant four more years of unnecessary, inequitable and unfair competition in the construction bidding process in Montana.

Employers who pay higher wages to their workers have, as result of the failure of this legislation in 1987, been forced to pay higher workers' compensation premiums and to compete against employers who pay substandard wages. Under current law, employers who pay lower wages also pay lower workers' compensation premiums -- even though work place accidents and injuries on their jobs exceed those of the higher paid union workers.

That's right -- union workers are safer workers, and because they generally pay higher wages, union contractors are forced to subsidize the less safe non-union contractors workers' compensation coverage!

The November, 1990, Journal of Occupational Medicine published a study entitled, "Safety Performance among Union and Nonunion Workers in the Construction Industry" by Dr. Dedobbeleer, et al. The study bluntly states: "... that by far the best variable for classifying workers as union or nonunion construction workers was the exposure to safety training." The study further shows that construction workers' safety performance is significantly related to union membership.

According to the January 1991 issue of Safety Spotlight, published by the National Erectors Association, the New Mexico State Legislature recently enacted a law reforming the state's workers compensation reporting requirements. As of January 1, 1991, workers' compensation rates will still be determined by payroll figures, but hours worked must also be reported. According to their Senate Bill 1, the legislature found that "... calculating workers' compensation premium rates strictly on the basis of an employer's wages paid discriminates against and penalizes higher-paying employers."

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3/14/91

BILL NO. HB 187

Testimony of Don Judge on HB 187

Page Two

March 14, 1991

This same publication also reported that the Pennsylvania Insurance Commissioner recently ordered that the state's rating bureau must notify its members that man-hour data must be collected from employers in 46 construction classifications beginning January 1, 1991. The order followed labor-management efforts to change the Pennsylvania workers' compensation premium base system from one based on payroll to one that is based on hours worked.

This legislative session, you will have the opportunity to put Montana construction employers on a level playing field. You can vote to help stabilize an unfair bidding situation and to apply an important system of worker protection on a fair and equal basis.

We urge you to do so by giving your support to House Bill 187. Thank you.



MONTANA IRONWORKERS JOINT
APPRENTICESHIP AND JOURNEYMAN TRAINING PROGRAM
P.O. BOX 3206 PHONE (406) 771-0404 GREAT FALLS, MT 59403-3206



JOHNNY MONAHAN
Director

MANAGEMENT:
JACK DE VRIES
JAMES LECHNER
ALPH L. BELTRONE
LABOR:
DON JAMES
FRANCIS FITZPATRICK
RALD H. MILES

TESTIMONY OF JOHNNY MONAHAN
HOUSE BILL #187

Mr. Chairman and Committee Members. For the record, my name is Johnny Monahan and I am the Director of the Montana Ironworkers Joint Apprenticeship and Journeyman Training Programs, which is a jointly administrated Labor - Management Program.

Housebill 187 is a bill that would create a level playing field between Union and Non-Union Contractors.

Under the present system, whereby Worker's Compensation premium is based on \$100. units of payroll, the employer paying higher wages pays more in premiums, in some cases double, than the lower paying employer whose employees perform identical work, have identical hazard exposure and receive equivalent Worker's Compensation benefits. The Union employee demands higher wages because they have been properly trained in skills and safety and therefore are less likely to be injured on the job. Yet, the employer who employs the most qualified workers is penalized and the employer who employs the least qualified worker is rewarded by the present system.

It is difficult to imagine anything more unfair than the present system which severely handicaps certain Contractors as they compete for business in the free marketplace. If the same discriminatory practice were extended to the purchase of material and equipment, the "RESTRAINT OF TRADE" violations would be obvious and anti-trust proceedings against the perpetrators would be automatic.

On behalf of the Montana Ironworkers Training Programs and myself, I thank the Committee for your consideration. I hope that upon close review of this problem you will conclude that there is a drastic inequity in the present Worker's Compensation rate structure for the construction industry.

We urge you to give a "DO PASS" consideration to house bill 187.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 4

DATE 3/14/91

BILL NO. HB187

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE TERRELL LENMARK
RE HOUSE BILL 187

Mr. Chairman and members of the committee:

My name is Jacqueline Terrell Lenmark. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 180-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

We, the American Insurance Association, (~~oppose/support~~) **HB 187**

To attack a problem sensibly it is necessary to understand what the problem really is. That must precede any credible proposals for solving the problem. There has been little effort to ascertain in an objective way the nature of the problem we think we are addressing today. Most analysis has had the goal of supporting preconceived conclusions, i.e., it has been advocate's research.

Changing the basis for workers' compensation insurance premiums to hours worked instead of total payroll would raise costs for the majority of affected employers while only slightly reducing rates for a few high-wage employers. Estimates from other states showed that 80% of employers would pay more, as much as double, while achieving a 5% reduction for some employers. The higher costs do not include the costs created by the additional recordkeeping burden on employers and insurers.

Lack of confidence in the accuracy of a rating base using hours worked would reduce consumer choice. Fewer and smaller carriers would mean an increasing monopoly for the state fund, as insurers avoid marginal risks for which their confidence in the pricing system is lowest, such as new, small, or high risk employers. This would not only tax the capacity of the state fund to handle additional business, but would also create additional financial pressure on the state fund and Montana taxpayers.

Use of a costly new insurance premium rate base unique to Montana also would have a detrimental effect on the insurance market place. All states with workers' compensation insurance now use total payroll. The cost of developing an hours worked system for Montana, as well as new internal data systems for insurers for use only in this state, would further discourage insurers from competing for business.

There is no unfair discrimination in the present total payroll system that would justify the expense and disruption to ratemaking that switching to a new system would create. Total payroll as the basis for premium is approved by the insurance department under legal standards that require that rating systems be designed to produce rates that are not excessive, inadequate, or unfairly discriminatory.

The present rating system is sensitive to the true loss potential of individual employers. An individual employer's actual premiums are calculated only after making a series of pricing adjustments. First, overall rate levels are translated into "manual" rates that provide loss-sensitive pricing by

grouping jobs with similar hazards into employment classifications. Additional price adjustments apply to all but the smallest employers, whose past loss histories are not actuarially predictive of future losses. The initial adjustment (a credit or debit) is for "experience." The experience modification is calculated separately for each employer based on the record of its actual losses. Further pricing adjustments include a discount based on economies of scale in issuing policies over a minimum size, deviations that recognize reduced risk of loss, loss-sensitive divided plans which may return funds to policyholders at the conclusion of the policy year, and retrospective rating plans for large employers whose final rate is calculated at the end of the policy period based on actual loss experience.

to assure a fair price to all employers, the basis for workers' compensation insurance premiums must reflect 2 factors:

The employer's exposure to hazard.

Records are always available and verifiable.

Total payroll satisfies these requirements:

Payrolls reflect exposure to hazard - number of workers, length of time worked, AND wage levels.

Records are always available and verifiable because they are kept for other purposes, not just for workers' compensation. For example, federal and state unemployment insurance laws require employers to report all wages paid on a quarterly basis. Employers must also keep these records for income tax, FICA, and other purposes.

Hours worked would not satisfy these requirements. For example, there would be significant recordkeeping problems:

Most employers are not required to report information detailed as hours worked. There would be an additional

paperwork burden on employers because hours worked data would be collected only for insurance purposes.

The accuracy of hours worked data reported by employers would be difficult to verify. It would be harder to detect recordkeeping errors and easier for dishonest employers to understate their true insurance exposure.

Hours worked would entail significantly more time for auditing employer records than total payroll, thus it would add directly to the administrative costs of workers' compensation insurance.

Insurers would need to collect hours worked data for 3 to 5 years before enough information would be available on which a rating system could be constructed, even if the information were reliable. During this time, employers would pay twice for the administrative expense of collecting data:

Once for the current system, and again for the additional expense of collecting hours worked data and constructing a new rating system based on that information.

Hours worked do not reflect the components of insurance costs as well as total payroll:

Hours worked do not recognize that indemnity benefits are tied to worker's pre-injury wages.

Hours worked are less sensitive to medical costs. Higher wage workers as a whole live in geographic areas with more expensive medical costs.

Total payroll rises automatically as the economy expands and reduces the level of rate adjustments otherwise needed.

Significant uncertainty over accuracy of hours worked data would either lead to higher rates to offset possible undercounting of the insurance exposure, or inadequate rates that could threaten the insurance market and jeopardize payments to injured workers.

Studies of the basis for workers' compensation premium have consistently rejected adoption of hours worked as an alternative base, while total payroll has been validated as a fair and effective system.

The governor's Task Force on Premium Equity in Oregon upheld the use of total payroll.

Legislation to adopt hours worked has failed of enactment in all states to consider the issue.

In the only state which uses hours worked (Washington, a state monopoly fund), the head of the fund has criticized hours worked and called for premiums based on payroll.

Unlike price adjustments based on losses, which provide direct incentive for employers to prevent injuries, a rating system based on hours worked will reward high-wage employers at the expense of lower-wage employers regardless of their safety records.

Submitted to Anti-Riot committee for hearing on House Bill
187, March 14, 1991, 3:00 o'clock p.m.

Respectfully submitted,

Jacqueline Terrell Lenmark
Jacqueline Terrell Lenmark

ATT Sweevey

FACT STATEMENT IN OPPOSITION
TO HOUSE BILL 187

**Hours worked would do nothing to alter the total costs of the workers' compensation system.

**Hours worked would massively redistribute the premium costs from the very large employer to the very small employer. As many as 80% of construction employers in Montana would pay substantially more in standard premium than under the current system. They would pay this increased amount regardless of whether they have had loss free experience, or very good ratios.

**Auditing problems would be insurmountable since hours worked data is not readily available, verifiable, or maintained for non-insurance purposes. Employers who do not maintain hourly worked records, would only be able to "log" hours worked information; this information would not be verifiable by the Insurance Industry with external source documents.

**Dual record keeping would be required and would result in increased administrative and overhead costs for employers and insurance companies.

**The ratemaking system would be seriously disrupted since there is no data base for hours worked for any industry in Montana. The ratemaking organization would estimate an hours worked rate for a minimum of five years before any real data could be analyzed to determine if accurate information is available to produce actuarially sound hour worked rates.

**Total payroll keeps the manual rates at their lowest level, since all losses are spread over the largest possible base.

SENATE LABOR & EMPLOYMENT

- 1 -

EXHIBIT NO. 6

DATE 3/14/91

BILL NO. HB 187

**It does not work. Washington is the only state to have man-hours. Washington has had serious problems with its workers' compensation system. Washington is a monopolistic state fund, and operates a "pay as you go system," leaving the potential for future unfunded liabilities for injured workers. Employees are paying part of the premium in Washington.

A New York Board study concluded that "hours worked, as a basis of premium, would completely destroy the established equitable premium charges from employer to employer."

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 14 day of MARCH, 1991.

Name: ROBERT NOMMENEN

Address: 124 15TH AVE NW
GREAT FALLS, MT 59404

Telephone Number: (406) 761-7920

Representing whom?

SLETTEN CONSTRUCTION Co.

Appearing on which proposal?

HB 187

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DATE 3-11-91

COMMITTEE ON

Labor - Senate

HB 187-HB 812-HB 857-SB 417

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Charles R. Brooks	MT RETAIL ASSOC	417		✓
Bob Nannmarken	SLATTERY CONSTRUCTORS	187	✓	
Brendan Beatty	MT Assoc. of Realtors	417		✓
MICHAEL MIZENKO	MT STATE ASSO Plumbers & Pipefitters	187	✓	
Dorlene McDaniel	Concern Citizens	187	✓	
Terry Minner	MFT / MFE	857	✓	
Jim Otterby	Operating Eng. #400	187	✓	
Wally L Craig	- self -	417		✓
Bill Mahan	Montana Metal Bldg	187	✓	
KEITH OLSON	MT Logging Assn.	812	✓	
JAMES TUTWILER	MT CHAMBER COM	SB417		✓
Garrie Shotton	Bozeman Chamber	SB417		✓
CHUCK HUNTER	DOLI	HB812	✓	
Ken Moore	Helena Ministerial Assoc	SB417		✓
Kenneth W. Moore	Christian Churches in MT	SB417		✓
Lynd Fent	MT St & Lg Lion	HB187	✓	
Chris Ericson	MT CARPENTERS	HB187	✓	
Johnny MOWMAN	MONTANA IRONWORKERS UN	HB187	✓	
Don JUDGE	MT. ST. AFL-CIO	HB187	✓	
Ron N. James	IRONWORKERS #841	HB187	✓	
HARRY Kenney	MT. ST. AFL-CIO	HB187	✓	
JOHN ALLEN	NATL. Elec. Contr. Assoc	"	✓	
Robert K. Murphy	LBFW	HB187	✓	
CAROL MOSHER	MT. CATTLEWOMEN	SB417		✓
GENE PHILLIPS	ALLIANCE AMER. INS			X
Lorna Frank	MT. Farm Bureau	SB417		X

(Please leave prepared statement with Secretary)

Senate Labor (cont'd)

3/14/91

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kay Norenberg	WIFE	SB417		✓
CURT LAINGEN	MT MOTOR CARRIER'S ASSN	HB812	✓	
Baldwin D. Jol	AFSCME	HB187	✓	
DEWEY HALL	SELF	HB187	✓	
DEWEY HALL		HB875	✓	
Jim Harmon	Nat. Soc. of CPA	HB417		✓
Jim Murphy	State Guard	HB812	✓	
		HB417		X
Don Jude	MT STATE AFL-CIO	HB875 HB812	X X	
DEWEY HALL	SELF	HB812	X	
PAT Sweeney	STATE FUND	HB187		✓
Bob Heiser	UFCW	HB812 HB875	X	
Jacqueline N. Terrell	Am. Ins. Assoc.	HB187		✓
Jacqueline N. Terrell	Am. Ins. Assoc.	SB417		✓
Jacqueline N. Terrell	Am. Ins. Assoc.	HB812	✓	

(Please leave prepared statement with Secretary)

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 26, 1991, at 3:10 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON HOUSE BILL 807

Presentation and Opening Statement by Sponsor:

Representative Royal Johnson told the Committee House Bill 807 was an attempt to make workers' compensation and unemployment insurance exemptions consistent. He explained an area specifically addressed was newspaper carriers.

Proponents' Testimony:

Mike Voeller a lobbyist for Lee Enterprises Inc. told the Committee their primary concern was with the section regarding unemployment insurance exemption for newspaper carriers and free lance correspondents. He explained it is the same exemption as the workers' compensation statutes. He commented House Bill 807 received a unanimous vote in the House Labor Committee, was placed on the consent calendar and passed 99 to zero.

EXECUTIVE ACTION ON HOUSE BILL 204

Amendments, Discussion, and Votes:

Senator Blaylock moved to reconsider the Committee's action on House Bill 204.

Senator Aklestad stated there are contractors who will be negatively impacted because of HB 204. He told the Committee it was his hope the best would be done for the majority of the employees and employers of Montana rather than being dictated to by a minority, in this case, "the labor unions dictating policy for this state". He asked when the other 84% of the workforce in Montana would be taken into consideration.

Senator Towe told the Committee he was in support of the legislation. He pointed out HB 204 includes a four-day ten-hour workday provision. He stated if someone wishes to work someone more than ten hours in one day (no matter the circumstances) they should be compensated with overtime.

Senator Devlin told the Committee he has received letters from employees which stated if they missed a few days work they would like to make it up in order to receive the 40 hours in a week.

Senator Pipinich commented he received a petition with the names of 350 people in support of the bill. He told the Committee he received two and three letters from the same "outfit".

Senator Blaylock told the Committee he would not support House Bill 204 on the Senate floor. He explained he received a letter from five union contractors in his area who are very much opposed to HB 204, as well as other union and non-union people who want to be allowed to work these shifts.

Senator Doherty stated there is a constitutional prohibition against anything less than overtime for 8 hours of work. There is an exemption written in. The construction industry is not written in, and could be. He stated five eights or four tens is flexible.

The motion to remove House Bill 204 from the table CARRIED by Roll Call Vote with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe).

Senator Blaylock moved amendments to House Bill 204.

Senator Towe explained the amendments which would strike the existing provision which defines the construction industry and inserts language which is consistent with two other bills; there

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 26, 1991

Page 21 of 26

is a coordinating amendment with House Bill 187 and House Bill 342.

The motion to amend House Bill 204 CARRIED with eight (8) YES (Senator Aklestad, Senator Blaylock, Senator Doherty, Senator Devlin, Senator Lynch, Senator Nathe, Senator Pipinich, and Senator Towe); one (1) NO (Senator Keating).

Senator Blaylock moved to amend House Bill 204 for inclusion of an effective date. Motion CARRIED with eight (8) YES (Senator Aklestad, Senator Blaylock, Senator Doherty, Senator Devlin, Senator Lynch, Senator Nathe, Senator Pipinich, and Senator Towe); one (1) NO (Senator Keating).

Senator Blaylock moved House Bill 204 BE CONCURRED IN as amended.

Senator Lynch asked if House Bill 204 does not pass would the ten-hour day be on the books at the present time. Could the present system be taken to court because they are not excluded anywhere in the law.

Senator Towe stated there is a question as what that the constitutional amendment reads, what it means. He stated if it means, what it seems to mean, it states a normal day is eight hours.

Senator Keating stated there is a qualifying statement in the constitution which says the Legislature may extend those work hours for the general welfare.

Senator Lynch asked if the Legislature has done this for the construction industry.

Recommendation and Vote:

The motion for House Bill 204 BE CONCURRED IN as amended CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe).

Senator Aklestad told the Committee the timing for Senate Bill 417 (by the time Senator Williams could get it off the Table in Committee and down on the Senate floor) would be too late. He asked for a minority report.

EXECUTIVE ACTION ON HOUSE BILL 141

Amendments, Discussion, and Votes:

LA032691.SM1

renumber the subsequent sections.

Senator Aklestad stated if this is found invalid it negates this bill, but there is a potential to lose the grant monies of approximately \$50 million.

The motion to amend CARRIED with six (6) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, Senator Nathe, and Senator Towe); three (3) NO (Senator Aklestad, Senator Devlin and Senator Keating).

The Aklestad motion to BE NOT CONCURRED IN as amended CARRIED by a Roll Call Vote with five (5) YES (Senator Aklestad, Senator Blaylock, Senator Devlin, Senator Keating, and Senator Nathe); three (3) NO (Senator Lynch, Senator Pipinich, and Senator Towe). Senator Doherty was absent for the vote.

Senator Lynch requested a Minority Report on House Bill 141.

EXECUTIVE ACTION ON HOUSE BILL 187

Amendments, Discussion, and Votes:

Senator Keating moved to amend House Bill 187 (HB018702.ATG). Senator Keating explained there was an agreement made as to how insurance premiums would be formulated. He told the Committee the amendment was agreed to by all parties. He asked Jacqueline Terrell to explain the amendment. Ms. Terrell explained the amendment proposes a method of giving those contractors who pay high wages, (above average weekly wage) a way of applying to the workers' compensation insurer for a premium credit. She stated as the bill original concept was to completely change the method of premium calculation for the construction industry from total payroll to hours worked. She told the Committee there is no state in the United States which calculates their premiums in that way. The problem Representative Driscoll was attempting to address is the problem of those contractors who pay very high wages, and who may, as a result, have a disproportionate burden in their workers' compensation premium. The amendment addresses the problem but does not require the State Fund or private carriers to completely re-design a workers' compensation system for construction. She explained the concept Representative Driscoll presented during the hearing was a system in which a contractor would be penalized if they were paying under the average weekly wage; and rewarded if paying over the weekly wage. It also would have required the State Fund and private carriers to re-design the workers' compensation system. This proposal codifies a method of addressing the problem that has already been adopted in Florida, Missouri, Delaware, and Oregon. Construction and the insurance industry agreed to this proposal in Iowa but it was not implemented there.

Senator Nathe asked what the net effect will be. Ms. Terrell explained the net effect will be a revenue neutral plan. It will put a minimal rate increase into the workers' compensation system for construction which will be applied across the board. The contractors paying over the average weekly rate will be entitled to apply for a credit. She explained the advantage to this proposal is the other benefits employers receive are not deleted. The employer is still eligible for volume discount, experience modification factor, etc.

Senator Towe asked if there will be a premium increase what is the benefit of the bill. Ms. Terrell explained the premium increase will apply across the board to make the board revenue neutral. Representative Driscoll's purpose in this bill was to give relief to those employers paying their workers high wages. Those employers can go to the State Fund or private insurers and request a refund.

The Keating motion to amend CARRIED UNANIMOUSLY.

Senator Keating moved the amendments as prepared by McClure with a construction definition and coordination with House Bill 204 and House Bill 342. Motion CARRIED UNANIMOUSLY.

Senator Keating moved House Bill 187 BE CONCURRED IN as amended. Motion CARRIED with eight (8) YES (Senator Aklestad, Senator Blaylock, Senator Devlin, Senator Doherty, Senator Keating, Senator Lynch, Senator Pipinich, and Senator Towe); one (1) NO (Senator Nathe). Senator Harp will carry House Bill 187 on the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 600

Amendments, Discussion, and Votes:

Senator Aklestad moved to TABLE House Bill 600.

Motion to TABLE House Bill 600 CARRIED with five (5) YES (Senator Aklestad, Senator Blaylock, Senator Devlin, Senator Keating, and Senator Nathe); three (3) NO (Senator Lynch, Senator Pipinich, and Senator Towe). Senator Doherty was absent.

EXECUTIVE ACTION ON HOUSE BILL 643

Amendments, Discussion, and Votes:

Senator Lynch moved House Bill 643 BE CONCURRED IN.

Senator Keating moved House Bill 643 BE NOT CONCURRED IN.

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/26/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 2 of 2
April 2, 1991

Page 1 of 2
April 2, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 187 (third reading copy -- blue), respectfully report that House Bill No. 187 be amended and as so amended be concurred in:

1. Title, lines 7 through 10.

Following: "INDUSTRY"; on line 7

Strike: remainder of line 7 through "PAYROLL" on line 10

Insert: "REQUIRING A METHOD OF COMPUTING WORKERS' COMPENSATION PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY THAT DOES NOT IMPOSE A HIGHER PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES"

2. Page 5, lines 4 through 7.

Following: "any"

Strike: remainder of line 4 through "structure" on line 7

Insert: "the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site"

3. Page 8, lines 3 through 8.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Premium rates for construction industry -- filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the rating organization described in 33-16-1005 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at the Montana average weekly wage as reported by the department.

(3) The rating organization shall file a revenue neutral plan for new and renewed policies by July 1, 1992, for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation mutual insurance fund, plan No. 3, shall adopt the plan filed by the rating organization or adopt a credit scale plan that meets the requirements of this section."

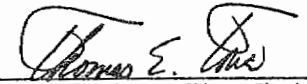
4. Page 15, line 2.

Following: line 1

Insert: "NEW SECTION. Section 11. Coordination instruction.

The definition of "construction industry" in [section 2(6) of this act] is intended to coordinate with the definitions of "construction industry" in House Bills No. 204 and 342."

Re-number: subsequent section

Signed: 
Thomas E. Towe, Vice-Chairman

LB 4/2/91
Amd. Cbord.
JB 4/2
Sec. of Senate

HOUSE BILL NO. 187

INTRODUCED BY DRISCOLL, HARP, WANZENRIED, THAYER, MANNING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS' COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM RATES; DEFINING "CONSTRUCTION INDUSTRY"; ~~REQUIRING--THAT PREMIUM--RATES--TO--BE--PAID--FOR--WORKERS--COMPENSATION--FOR--THE CONSTRUCTION-INDUSTRY--BE--COMPUTED--ON--THE--NUMBER--OF--HOURS WORKED--RATHER--THAN--ON--A--PERCENTAGE--OF--PAYROLL~~ REQUIRING A METHOD OF COMPUTING WORKERS' COMPENSATION PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY THAT DOES NOT IMPOSE A HIGHER PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES; AMENDING SECTIONS 33-16-1004, 39-71-116, 39-71-402, 39-71-426, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-16-1004, MCA, is amended to read:

"33-16-1004. Rates -- considerations -- methods -- standards. All rates ~~shall~~ must be made in accordance with the following provisions:

(1) Due consideration ~~shall~~ must be given to:

(a) past and prospective loss experience within and outside this state; ~~to;~~

(b) catastrophe hazards, if any; ~~to;~~

(c) a reasonable margin for underwriting profit and contingencies; ~~to;~~

(d) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; ~~to;~~

(e) past and prospective expenses, both countrywide and those specially applicable to this state; ~~;~~

(f) investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this state; and ~~to~~

(g) all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof of insurance for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which that establish

standards for measuring variations in hazards or expense provisions, or both. Such The standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Rates ~~shall~~ may not be excessive, inadequate, or unfairly discriminatory.

(5) Except to the extent necessary to meet the provisions of subsections (1) through (3), uniformity among insurers in any matter within the scope of this section is neither required nor prohibited."

Section 2. Section 39-71-116, MCA, is amended to read:

"39-71-116. **Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly

earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury ~~{however--such-a-parent-is-a-beneficiary--only--when~~ if no beneficiary, as defined in subsections (3)(a) through (3)(d) ~~of this section, exists};~~ and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury ~~{however--such-a-brother-or-sister-is-a-beneficiary~~ but only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e)

1 of-this-section, exists}.

2 (4) "Casual employment" means employment not in the
3 usual course of trade, business, profession, or occupation
4 of the employer.

5 (5) "Child" includes a posthumous child, a dependent
6 stepchild, and a child legally adopted prior to the injury.

7 (6) "Construction industry" means any AN activity--in
8 connection----with---the---erection,---alteration,---repair,
9 replacement,--renovation,--installation,--or--demolition--of--a
10 building,--highway,--bridge,--or--structure THE MAJOR GROUP OF
11 GENERAL CONTRACTORS AND OPERATIVE BUILDERS, HEAVY
12 CONSTRUCTION (OTHER THAN BUILDING CONSTRUCTION) CONTRACTORS,
13 AND SPECIAL TRADE CONTRACTORS, LISTED IN MAJOR GROUPS 15
14 THROUGH 17 IN THE 1987 STANDARD INDUSTRIAL CLASSIFICATION
15 MANUAL. THE TERM DOES NOT INCLUDE OFFICE WORKERS, DESIGN
16 PROFESSIONALS, SALESMEN, ESTIMATORS, OR ANY OTHER RELATED
17 EMPLOYMENT THAT IS NOT DIRECTLY INVOLVED ON A REGULAR BASIS
18 IN THE PROVISION OF PHYSICAL LABOR AT A CONSTRUCTION OR
19 RENOVATION SITE.

20 {6}{7} "Days" means calendar days, unless otherwise
21 specified.

22 {7}{8} "Department" means the department of labor and
23 industry.

24 {8}{9} "Fiscal year" means the period of time between
25 July 1 and the succeeding June 30.

1 {9}{10} "Insurer" means an employer bound by
2 compensation plan No. 1, an insurance company transacting
3 business under compensation plan No. 2, the state fund under
4 compensation plan No. 3, or the uninsured employers' fund
5 provided for in part 5 of this chapter.

6 {10}{11} "Invalid" means one who is physically or
7 mentally incapacitated.

8 {11}{12} "Maximum healing" means the status reached when
9 a worker is as far restored medically as the permanent
10 character of the work-related injury will permit.

11 {12}{13} "Order" means any decision, rule, direction,
12 requirement, or standard of the department or any other
13 determination arrived at or decision made by the department.

14 {13}{14} "Payroll", "annual payroll", or "annual payroll
15 for the preceding year" means the average annual payroll of
16 the employer for the preceding calendar year or, if the
17 employer shall not have operated a sufficient or any length
18 of time during such calendar year, 12 times the average
19 monthly payroll for the current year. However, an estimate
20 may be made by the department for any employer starting in
21 business if no average payrolls are available. This estimate
22 is to be adjusted by additional payment by the employer or
23 refund by the department, as the case may actually be, on
24 December 31 of such current year. An employer's payroll must
25 be computed by calculating all wages, as defined in

1 39-71-123, that are paid by an employer.

2 ~~(14)~~(15) "Permanent partial disability" means a
3 condition, after a worker has reached maximum healing, in
4 which a worker:

5 (a) has a medically determined physical restriction as
6 a result of an injury as defined in 39-71-119; and

7 (b) is able to return to work in the worker's job pool
8 pursuant to one of the options set forth in 39-71-1012 but
9 suffers impairment or partial wage loss, or both.

10 ~~(15)~~(16) "Permanent total disability" means a condition
11 resulting from injury as defined in this chapter, after a
12 worker reaches maximum healing, in which a worker is unable
13 to return to work in the worker's job pool after exhausting
14 all options set forth in 39-71-1012.

15 ~~(16)~~(17) The term "physician" includes "surgeon" and in
16 either case means one authorized by law to practice his
17 profession in this state.

18 ~~(17)~~(18) The "plant of the employer" includes the place
19 of business of a third person while the employer has access
20 to or control over such place of business for the purpose of
21 carrying on his usual trade, business, or occupation.

22 ~~(18)~~(19) "Public corporation" means the state or any
23 county, municipal corporation, school district, city, city
24 under commission form of government or special charter,
25 town, or village.

1 ~~(19)~~(20) "Reasonably safe place to work" means that the
2 place of employment has been made as free from danger to the
3 life or safety of the employee as the nature of the
4 employment will reasonably permit.

5 ~~(20)~~(21) "Reasonably safe tools and appliances" are such
6 tools and appliances as are adapted to and are reasonably
7 safe for use for the particular purpose for which they are
8 furnished.

9 ~~(21)~~(22) "Temporary total disability" means a condition
10 resulting from an injury as defined in this chapter that
11 results in total loss of wages and exists until the injured
12 worker reaches maximum healing.

13 ~~(22)~~(23) "Year", unless otherwise specified, means
14 calendar year."

15 ~~NEW-SECTION:--Section-3:--Premium-rates-for-construction~~
16 ~~industry:--The-premium-rates-under-plan-No-2-AND-PLAN-NO-3~~
17 ~~to-be-paid-for-workers'-compensation--insurance-for-the~~
18 ~~construction-industry-must-be-computed-on-the-number-of~~
19 ~~hours-worked-for-each-occupation-classification-rather-than~~
20 ~~on-a-percentage-of-payroll:--~~

21 NEW SECTION. SECTION 3. PREMIUM RATES FOR CONSTRUCTION
22 INDUSTRY -- FILING REQUIRED. (1) WITH RESPECT TO EACH
23 CLASSIFICATION OF RISK IN THE CONSTRUCTION INDUSTRY UNDER
24 PLAN NO. 2, THE RATING ORGANIZATION DESCRIBED IN 33-16-1005
25 SHALL FILE WITH THE COMMISSIONER OF INSURANCE A METHOD OF

COMPUTING PREMIUMS THAT DOES NOT IMPOSE A HIGHER INSURANCE PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES PAID.

(2) THE COMMISSIONER SHALL ACCEPT A FILING UNDER SUBSECTION (1) THAT INCLUDES A REASONABLE METHOD OF RECOGNIZING DIFFERENCES IN RATES OF PAY. THIS METHOD MUST USE A CREDIT SCALE WITH THE STARTING POINT SET AT THE MONTANA AVERAGE WEEKLY WAGE AS REPORTED BY THE DEPARTMENT.

(3) THE RATING ORGANIZATION SHALL FILE A REVENUE NEUTRAL PLAN FOR NEW AND RENEWED POLICIES BY JULY 1, 1992, FOR PROMPT AND ORDERLY TRANSITION TO A METHOD OF COMPUTING PREMIUMS THAT IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

(4) THE STATE COMPENSATION MUTUAL INSURANCE FUND, PLAN NO. 3, SHALL ADOPT THE PLAN FILED BY THE RATING ORGANIZATION OR ADOPT A CREDIT SCALE PLAN THAT MEETS THE REQUIREMENTS OF THIS SECTION.

SECTION 4. SECTION 39-71-402, MCA, IS AMENDED TO READ:

"39-71-402. Extraterritorial application and reciprocity -- exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

SECTION 5. SECTION 39-71-426, MCA, IS AMENDED TO READ:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."

Section 6. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such

payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(2)(a)(3)(a) through (2)(d) (3)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116(2)(e)(3)(e) and (2)(f) (3)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased

employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(2)(b)~~(3)(b) through ~~(2)(d)~~(3)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116~~(2)~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 7. Section 39-71-723, MCA, is amended to read:

"39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be

divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections ~~(2)(e)~~ (3)(e) and ~~(2)(f)~~ (3)(f) of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the department."

Section 8. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in

1 39-71-120.

2 (8) "Insurer" is as defined in 39-71-116.

3 (9) "Invalid" is as defined in 39-71-116.

4 (10) "Occupational disease" means harm, damage, or death
5 as set forth in 39-71-119(1) arising out of or contracted in
6 the course and scope of employment and caused by events
7 occurring on more than a single day or work shift. The term
8 does not include a physical or mental condition arising from
9 emotional or mental stress or from a nonphysical stimulus or
10 activity.

11 (11) "Order" is as defined in 39-71-116.

12 (12) "Pneumoconiosis" means a chronic dust disease of
13 the lungs arising out of employment in coal mines and
14 includes anthracosis, coal workers' pneumoconiosis,
15 silicosis, or anthracosilicosis arising out of such
16 employment.

17 (13) "Silicosis" means a chronic disease of the lungs
18 caused by the prolonged inhalation of silicon dioxide (SiO)
19 and characterized by small discrete nodules of fibrous
20 tissue similarly disseminated throughout both lungs, causing
21 the characteristic x-ray pattern, and by other variable
22 clinical manifestations.

23 (14) "Wages" is as defined in 39-71-123.

24 (15) "Year" is as defined in 39-71-116(8)---and
25 39-71-116(22)."

1 **Section 9.** Section 39-73-108, MCA, is amended to read:

2 "39-73-108. Payment of benefits where person entitled
3 is in institution. If any person who is entitled to benefits
4 under this chapter shall be an inmate in any Montana state
5 institution, benefits shall not be paid to him but shall be
6 paid his beneficiary, if any, as defined in 39-71-116(2)."

7 NEW SECTION. Section 10. Codification instruction.
8 [Section 3] is intended to be codified as an integral part
9 of Title 39, chapter 71, part 22, and the provisions of
10 Title 39, chapter 71, part 22, apply to [section 3].

11 NEW SECTION. SECTION 11. COORDINATION INSTRUCTION. THE
12 DEFINITION OF "CONSTRUCTION INDUSTRY" IN [SECTION 2(6) OF
13 THIS ACT] IS INTENDED TO COORDINATE WITH THE DEFINITIONS OF
14 "CONSTRUCTION INDUSTRY" IN HOUSE BILLS NO. 204 AND 342.

15 NEW SECTION. Section 12. Effective date. [This act] is
16 effective July 1, 1992.

-End-